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CURRENT TOPICS

Legal Aid in Top Gear

THE Fifth Report of The Law Society on the Operation and Finance of Part I of the Legal Aid and Advice Act, 1949 (H.M. Stationery Office, 2s. 6d.), shows that the legal aid scheme has settled down to a steady rhythm, which seems unlikely to be seriously disturbed by the introduction of legal aid in the county courts. During the period covered by the report (which The Law Society has already covered in its own annual report) 25,042 certificates were issued and, although only 22,182 certificates were discharged or revoked, payments have been made to solicitors and counsel on the completion of 31,003 cases. Most of the difficulties which have arisen during the first five years of the scheme have been resolved, and the Council report that no new difficulties or administrative problems of any complexity have been encountered. Last week we commented on ROXBURGH, J.'s remarks about a case where an assisted person had no means of paying the successful defendant's costs, and we are pleased to learn from the report that the 1954 amendment to General Regulation 11, which enables an area committee to discharge a certificate if, as a result of any information coming to their knowledge, they consider that the assisted person no longer has reasonable grounds for continuing, is working smoothly and well. Two hundred and twenty certificates have been discharged under this provision and this safeguard should be a protection to defendants who consider that they are being unjustly sued. The decision of SACHS, J., in *Bezzi* v. *Bezzi* (*ante*, p. 92) emphasises that occasionally the Divorce Department can make a profit, but also reminds us once again of the question whether it is necessary for the department to continue to exist. The Lord Chancellor's Advisory Committee calculate that the average cost of a case handled by the department is £49, and have been informed that the average cost of a case conducted by a private practitioner is £75. There are many practitioners who would be happier if their matrimonial cases yielded them an average of £75 each in profit costs. We trust that the Treasury's investigation into the matter will soon be completed, since there is ground for believing that the situation has changed to such an extent that private practitioners could and should handle all cases to the exclusion of the department. We propose to deal with the report in more detail next week.

"Every Man Expects——"

THE appositeness as well as the wit of Mr. Justice VAISEY'S statement in *Re Pringle, deceased* (*The Times*, 2nd February, 1956), attracted some attention. The case was brought under

CONTENTS

the Inheritance (Family Provision) Act, 1938, and his lordship ordered payment of 10s. a week out of a mother's estate of £2,291 to her only child, who was being maintained as a mentally defective patient at a hospital which was managed under the National Health Service Act. Vaisey, J., said that some people expected the Welfare State to perform not only their financial obligations but also those of affection. Nelson's signal at Trafalgar should now be written: "Every man expects England to do its duty." Because the infant plaintiff was being maintained by the State, the testatrix thought she was entitled to leave her property elsewhere. It had been held in *Re Watkins* [1949] 1 All E.R. 695 that there is nothing to prevent a testator from distributing his estate on the footing that a child under a mental disability can and should take advantage of the National Health Service Act, 1946, but Vaisey, J., thought that some provision should be made to enable the infant plaintiff to continue to enjoy extra comforts which had been provided by the testatrix in her lifetime.

Practice Arbitrations

In July, 1955, the General Council of the Bar announced "that it is undesirable for a practising member of the Bar to take part as an advocate at a mock trial or appeal before an audience of accountants or other professional men who might constitute a body of professional clients." In view of the implications this ruling might have on practice arbitrations conducted under the auspices of the Institute of Arbitrators, representations were made by the institute to the chairman of the General Council of the Bar. The following reply, dated 25th November, 1955, was received: "I refer to your letter of the 31st August to Sir Hartley Shawcross and subsequent correspondence which has now been considered by the Council's professional conduct committee. The committee has ruled that whilst there is no objection to a member of the Bar acting as arbitrator or otherwise in a supervisory capacity at practice arbitrations held by your institute, so long as their purpose is purely educational, it would be contrary to the Council's ruling of 1954 relating to mock trials and appeals for a practising barrister to take the part of counsel." *Arbitration*, the institute's journal, for December, 1955, comments: "It is a ruling which will cause some regret amongst all those concerned in these arbitrations, and not least the barristers themselves. It is, of course, well known that barristers must not advertise, and there are, of course, more ways of advertising than putting boards on one's back; nevertheless, it is a pity that the rule is so stringently enforced in respect of activities which are wholly educational."

Government under Law

At the instance of Mr. Justice Felix Frankfurter, who delivered the inaugural address at the conference on "Government Under Law," held under the auspices of Harvard University from 22nd to 24th September, 1955, to celebrate the bi-centenary of the birth of Chief Justice John Marshall, the address delivered on that occasion by Sir Raymond Evershed, as he then was, has been published in the *Law Quarterly Review*. It appears in the January, 1956, issue of the *Review* under the title "Government under Law in Post-war England." One of the most interesting of his illustrations was his account of how "something like a coherent principle has been infused by the courts into the patchwork legislation (the Rent Acts)—the principle that the governing purpose of the Acts is not more but not less than to protect (subject to the conditions of the Acts) the personal occupation of his home by the sitting tenant." This right "having many of the characteristics of a demise but without the presence of any true proprietary interest" had, he said, led to some difficulties and "the magnification of the idea of a licence" particularly in relation to married women deserted by their husbands to the continued occupation of the matrimonial home. The courts had recognised and accepted such a right, and they had also expressly refrained from making decisions which might stultify that part of the legislation which created the rent tribunals (see *per* Goddard, L.C.J., in *R.* v. *Brighton and Area Rent Tribunal* [1950] 2 K.B. 410, at p. 420) in order to check profiteering on the housing shortage. Another point made by Lord Evershed was that the emphasis which was formerly more on the protection of property and contract than of personality is now moving to the protection of personality. Recent analysis, Lord Evershed stated, shows that "to-day in England rather more than 45 per cent. of the cases which come to trial in the Queen's Bench Division are personal injury actions of one kind or another, either involving the common law of negligence (in respect, particularly, of road accidents) or arising under the Factory Acts, or (commonly in the latter case) both."

Hire-Purchase Transactions

The latest figures leave little room for doubt that the restrictions on hire-purchase transactions imposed by last year's orders have had considerable effect. Over the period of six months since the restrictions were re-imposed, according to figures compiled by H.P. Information, the number of hire-purchase contracts has fallen by 44 per cent. The information covers business in new and second-hand motor vehicles, agricultural machinery, tractors, caravans and industrial machinery. According to the British Radio Equipment Manufacturers' Association, the sale of radio receivers fell in 1955 by 14 per cent., but the sale of television sets rose by 6 per cent. The proportion of hire-purchase and credit sales for radio receivers and radiograms fell in December, but the figure for television sets remained at 50 per cent. The finance houses have reduced the volume of their transactions owing to the 15 per cent. cut in their advances, and, since October, two of the largest houses have refused to finance any pre-war cars and have raised deposits on other second-hand cars.

The Institute of Advanced Legal Studies

The eighth annual report of the Institute of Advanced Legal Studies of the University of London states that during the year 1st August, 1954, to 31st July, 1955, the number of books added to the library was 4,070, bringing the total stock to over 43,000. The serial publications received currently totalled 648, an increase of 33. Net expenditure on books from the institute's annual grant totalled £1,011 13s. 6d., and on periodical subscriptions £607 0s. 2d. The number of requests for bibliographical information has continued to increase. These requests come from libraries of Government departments, from courts, from other university law libraries, and from individual research workers. A reader's guide was printed in June, 1955. In addition to general information, there are sections on the library, the catalogue, arrangement of books, an outline of the classification and the location of classes. Copies can be made available on application.

Company Law and Practice

COMPANY DOG-FIGHTS

PUBLIC company "dog-fights" have been very much in the news of late, not entirely unaccompanied by incidents which, if they were not so very tragic for the smaller shareholders dependent on their investments, could afford grounds for much amusement.

A number of recent examples spring to mind. Dissatisfied shareholders of Gordon Hotels, Ltd., for instance, applied to the Board of Trade for the appointment of inspectors. The word "Hotels" in the company's name recalls the Savoy Hotel furore of some two years ago. The members of British Coated Board and Paper Mills, Ltd., eventually succeeded in removing all three of its then directors, although, despite the fact that the meeting was under the chairmanship of a distinguished Q.C., there seemed to be some little difficulty in understanding the result of the poll. And a shareholders' committee of the Union Castle Steamship Co., Ltd., not long ago announced its intention to seek a reorganisation of the board.

In this article it is proposed to discuss two of the principal remedies which are available to dissatisfied shareholders in a company. The first is the right to requisition an extraordinary general meeting. Such a meeting can be requisitioned for any purpose but, in practice, at least one of the purposes for which the meeting is requisitioned is to consider a resolution for the removal of one or more directors, and a resolution for the appointment of a nominee or nominees of the requisitionists in their stead. The second remedy is to seek the appointment, by the Board of Trade, of an inspector or inspectors to investigate the company's affairs.

Membership and voting rights

Under s. 132 of the Companies Act, 1948, members holding a specified proportion of the voting rights may, by adopting the procedure laid down in the section, cause an extraordinary general meeting to be convened on requisition. Under ss. 164 and 165 of the Act the Board of Trade may appoint inspectors to investigate a company's affairs on the application of members, and in certain other cases.

In company law the ultimate control of a company depends on the wishes of the holders of the majority of the shares carrying voting rights, which need not necessarily accord with the views of the majority of the members. In addition to preference shares, at the present time many companies have issued non-voting ordinary shares, generally as the result of so-called "bonus issues," and usually, but not invariably, designated "'A' ordinary shares." There is, however, no more magic in the expression than in the term "ordinary shares" itself. Everything, in the last resort, depends on the articles.

It is, however, important to keep the distinction in mind, for the holder of an "'A' share" is none the less a member of the company, even though he may not have a vote at meetings. The definition of a member in s. 26 (2) is a "person who agrees to become a member of the company, and whose name is entered in its register of members." Similarly, preference shareholders are also members of the company, although their voting rights may be, and generally are, restricted.

It follows that a remedy may be open to members under s. 164 or s. 165, although they may be unable to act under s. 132 because of their lack of voting rights.

Requisitioned meetings

Section 132 (1) of the Companies Act, 1948, provides that the directors of a company, notwithstanding anything in its articles, shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, forthwith proceed duly to convene an extraordinary general meeting of the company. Apart from the question of who may requisition, the important words, although well spread about the subsection, are "the directors . . . shall . . . forthwith proceed duly to convene." The subsection says nothing about the date of the meeting, nor does it impose any time limit for holding the meeting.

Section 132 (3) enacts that, if the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

There seems to be a defect in the scheme of the section which may result in delay and frustration of the requisitionists. Provided the meeting is duly convened within the twenty-one-day period referred to in s. 132 (3) there seems nothing (in the absence of special articles of the company) to prevent the directors convening the meeting for a date several months ahead.

Section 133 (1) (*b*) lays down a minimum period of fourteen days' notice for a meeting other than an annual general meeting, or a meeting for the passing of a special resolution; but it says nothing about maximum periods. A similar position arises under reg. 50 of Table A.

It has already been mentioned that one of the main objects of requisitioning an extraordinary general meeting is, commonly, to propose resolutions for the reform of the board. Such a resolution is an ordinary resolution and, if a director is to be removed, requires special notice (s. 184 (1), (2)), and the director is entitled to make representations in writing (s. 184 (3)). On one recent occasion the directors convened the requisitioned meeting for a date several months ahead. When challenged they replied that, as one of the proposed resolutions involved the removal of a director who was abroad, time must be allowed for him to be notified of the resolution and so that he might be enabled to submit any representations he wished to make.

The point is not covered by authority and the opposing arguments may be summarised as follows. The directors can argue that they have complied with s. 132 (1) in so far as they have forthwith duly convened the meeting. The requisitionists' right under s. 132 (3) only arises if the directors fail to convene the meeting within twenty-one days of the date of deposit of the requisition. The opposition might argue that the meeting should be held within three months,

otherwise their rights under s. 132 (3) have been nullified. They may consider the purpose for which they have requisitioned the meeting to be one of some urgency, yet, in view of the wording of the section, it is difficult to see how they can validly convene the meeting themselves.

Should the matter ever have to be considered judicially it seems probable that the directors will be required to state their reasons for the choice of the date for the meeting and that these reasons will be examined. Some test of reasonableness may be applied, bearing in mind that, in the last resort, the directors are trustees of their powers for the benefit of the company as a whole. The issue may ultimately turn on the motive of the directors in fixing the date of the meeting.

The form of requisition

Section 132 (2) provides that the requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form signed by one or more requisitionists.

Three points arise on this subsection. It is desirable to specify in the requisition any resolution that is to be proposed at the requisitioned meeting. In this connection the provisions of s. 183 (1) have been overlooked on more than one occasion in recent years, at any rate in the notice of meeting issued pursuant to the requisition. This subsection provides that at a general meeting of a company other than a private company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it. Of this last requirement there is faint hope at a requisitioned meeting. Section 183 (2) provides that a resolution moved in contravention of the section shall be void, whether or not its being so moved was objected to at the time. A defect of this nature is not, however, a sufficient ground for the directors to refuse to convene the meeting (*Isle of Wight Railway Co.* v. *Tahourdin* (1883), 25 Ch. D. 320).

Secondly, if the requisitionists are joint holders of shares it is necessary for all of them to sign the requisition (*Patent Wood Keg Syndicate, Ltd.* v. *Pearse* (1906), 50 Sol. J. 650).

Finally, the requisitions need not all be in identical language: they are in like form provided the substance of each of them is the same (*Fruit & Vegetable Growers Association, Ltd.* v. *Kekewich* [1912] 2 Ch. 52).

Inspections

The right to apply to the Board of Trade for the appointment of inspectors to investigate a company's affairs is not confined to those members of the company whose shareholdings confer upon them the right to vote at meetings of the company. Indeed, the right to appoint inspectors can sometimes be exercised by the Board independently of the members, as it was in the matter of the Savoy Hotel, Ltd.

The appointment

The provisions of ss. 164 and 165 of the Companies Act, 1948, may be summarised as follows:—

The Board of Trade *must* appoint an inspector if either the company by special resolution, or the court by order, declares that the company's affairs ought to be investigated by an inspector appointed by the Board (s. 165 (*a*)). An application by special resolution is likely to be rare. If the dissatisfied shareholders are in a position to secure the passage of a special resolution (which implies that they can command a three-fourths majority at a meeting) there are ample other means available to them to put the company's affairs in order, for example, by a reorganisation of the board of directors, reinforced perhaps by an alteration of the articles. The provision is, however, of value if the personal conduct of the directorship and management is open to review, because of the wide statutory powers of investigation and examination conferred by s. 167.

The Board of Trade *may* appoint an inspector in the case of a company having a share capital on the application of not less than 200 members, or of members holding not less than one-tenth of the shares issued (s. 164 (1) (*a*)). In this case the application must be supported by evidence that the applicants have good reason for requiring the investigation, and the Board may require the applicants to give security for the payment of the costs of the investigation up to a maximum of £100 (s. 164 (2)).

Apart from the foregoing, under s. 165 (*b*) the Board of Trade *may, of its own volition*, and even without the intervention of any of the members of the company, appoint an inspector if it appears to the Board that there are circumstances suggesting (i) that the company's business is being conducted with the intention of defrauding creditors or the oppression of any part of the members; (ii) that persons concerned in the management of the company's affairs have been guilty of fraud, misfeasance, or other misconduct; or (iii) that the company's members have not been given all the information with respect to the company's affairs which they might reasonably expect.

Although under s. 165 the Board of Trade may act without the intervention of members, there is nothing to prevent a group of shareholders approaching the Board of Trade to seek its intervention under the section. If the members can submit a *prima facie* case based on any of the circumstances set out in s. 165 (*b*), then they may request the Board to act, without regard to the size or strength of the group, nor need they provide security. On the other hand, if the request is based on circumstances other than those in s. 165 (*b*), then it will be necessary to obtain the required support, and to deposit the appropriate security as provided by s. 164.

The investigation

The inspector can examine on oath past and present directors, officers and agents of the company, and can require them to produce all books and documents in their custody (s. 167 (2)). He may report any refusal to the court, who may punish the offender as if guilty of contempt of court (s. 167 (3)).

The inspector is entitled, to enable him to prepare his report, to be assisted by a shorthand-writer for the purpose of taking a note of the evidence given before him. An officer or agent of the company is not entitled to refuse to answer any questions put to him by the inspector on the ground that the shorthand-writer is present (*Re Gaumont-British Picture Corporation, Ltd.* (1940), 56 T.L.R. 610). In this case a director of the company objected to the shorthand-writer's presence as, he claimed, the applicants for the inspection were a small minority of just over 10 per cent., including a person who was managing director of the chief competitor of the company and, under the Act, a copy of the inspector's report would be supplied to the applicants. This objection seems to overlook the distinction between the report itself and the evidence upon which the report is based.

The report

The inspector reports to the Board of Trade who, under s. 168, must supply a copy of the report to the company and, if the inspector was appointed under s. 164, on request to the applicants. The Board may also, if it thinks fit, furnish a copy to any member on payment of an appropriate fee, and may also cause the report to be printed and published (s. 168 (2)). This was done in the case of the Savoy Hotel, Ltd.

If from the report it seems that some action is desirable, the Board of Trade may, in appropriate circumstances :—

(1) Refer a matter to the Director of Public Prosecutions with a view to criminal proceedings (s. 169 (1)).

(2) Present a winding-up petition (s. 169 (3)).

(3) Present a petition for an order under s. 210 (s. 169 (3)).

(4) Bring proceedings, in the company's name, for the recovery of damages or specific property (s. 169 (4)).

H. N. B.

A Conveyancer's Diary

FOREIGN ADOPTIONS AND RIGHTS OF SUCCESSION

THE question whether an adoption made within a foreign jurisdiction entitles the person adopted to participate in or succeed to the property of the adopter (or vice versa) in the way in which, by s. 13 of the Adoption Act, 1950, an adoption order made in England entitles such persons so to participate or succeed, has now been before the court on at least two occasions—some two years ago in *Re Wilson* [1954] Ch. 733, and more recently in *Re Wilby* [1956] 2 W.L.R. 262, and p. 75, *ante*. The effect of s. 13 (1) of the Act, for the present purpose, is that, where at any time after the making of an adoption order the adopter or the adopted person dies intestate in respect of any property, that property devolves in all resects as if the adopted person were the child of the adopter born in lawful wedlock and was not the child of any other person. The result of the two decisions above-mentioned, given in different circumstances, is that, for purposes of succession within the jurisdiction, an adoption made outside the jurisdiction confers no special rights upon the adopted person (or the adoptive parents, as the case may be).

These decisions are without doubt sound, but I think that others may share my view that the ways in which they were reached were somewhat strange. In *Re Wilson* a married couple who were at all times domiciled in England (they were, at the time of the adoption, resident in America, but that was a wholly irrelevant factor) obtained an order from the Superior Court of Montreal in the Province of Quebec effecting the adoption by them of an infant. At that time the infant was domiciled in Quebec. The husband died intestate in England in 1953, i.e., after the Act of 1950 had come into operation, leaving as his statutory next of kin two sisters and (possibly) the adopted child. Vaisey, J., held that the latter was not entitled to participate in the estate.

The reasons for this decision are not very easy to find. First, the learned judge turned to s. 13 of the Act, on which, of course, the case for the adopted child turned, and of that section he said that it was noticeable that under subs. (4) the preceding references to an adoption order were to include references to an adoption order made in Northern Ireland (I shall return to this subsection later on), but that, with that exception, the adoption orders referred to in the 1950 Act were orders made by the courts in this country. This conclusion, one would have thought, would have been sufficient to decide the case ; but the learned judge went on to observe that it was difficult to say on what basis an adoption order made under a foreign jurisdiction could be brought either expressly or by implication within either the provisions or the principles of s. 13, and followed this observation up by examining in some detail the practice in regard to adoption in various countries, the views of text-writers on the effect of adoption on rights of succession, and the case law (mostly foreign, in the sense of non-English) on this subject. Some of the cases cited in argument were on the different but, it was suggested, analogous problems which arise where a person is legitimated *per subsequens matrimonium* according to one law and his status as a child has to be examined with a view to establishing rights of succession in the light of another law, but it is clear that the court derived virtually no assistance from these cases. But two of the half-dozen or so cases on the effect of adoption in this respect which were referred to seem to have been near enough to the circumstances of *Re Wilson* to afford some kind of a guide on the principle to be applied, assuming, of course, that the question before the court was one which required decision as a matter of principle rather than as a point of construction of a legislative enactment.

A question of domicile ?

The first was an American case, *Ross* v. *Ross* (1880), 129 Mass. Rep. 273. In this case a child adopted in another State, where the parties were domiciled at the time, was held to have the same rights of inheritance as legitimate offspring in the property of the adopting father. The second was *Re Pearson* [1946] V.L.R. 356, a case from the State of Victoria. Here it was held that whether or not an infant was issue of an adopter for the purposes of his will must be determined by the law of the adopter's domicile, and the decision on the facts was that the infant was not such issue, not on the ground of domicile but because the will was prior in date to the adoption order. There are cases referred to in this judgment which seem to go the other way, and the views of private international jurists are not, apparently, in harmony on this point, but it was, I imagine, the two cases mentioned by name above which prompted Vaisey, J., to say that if, in the case before him, the adopter had been domiciled in Quebec when the infant was adopted, the case of the latter would have been different and very much stronger. The actual decision, however, as I have already said, was that the infant was not entitled under the adopter's intestacy in England.

The hypothetical case envisaged by Vaisey, J., has now actually occurred in *Re Wilby*. *A* and *B*, then domiciled in Burma, in 1936 adopted *X*, then also domiciled in Burma, in accordance with the law of Burma, that is, by an agreement under seal between the adopters and the adopted infant's father, which was subsequently registered. There was no order of any court confirming or approving this agreement. The adopters and the adopted child subsequently all acquired

an English domicile, and the adopted child died intestate in England in 1954. The adoptive mother applied by summons to show cause why letters of administration should not be granted to her as lawful mother by adoption and (her husband having died) the only person entitled to the estate.

This application was refused. Barnard, J., referred to the decision in *Re Wilson*, and said that the adoption in the case would, no doubt, be recognised as valid in this country for some purposes (Vaisey, J., had expressed a similar view in *Re Wilson*), but the question which he (Barnard, J.) had to decide was whether the adoption entitled the adoptive mother to succeed to the deceased's estate on an intestacy. On this question, the learned judge went on to say, if he were to accede to the summons, it would have to be on the basis that the English courts recognised any foreign adoption, provided that the adopter and the adopted were domiciled in the country where the adoption was completed, for the purposes of succession to property under English law. It could not, the learned judge thought, be left to the judge to grant or refuse such an application according to how closely the law of adoption in the foreign country approximated to the English law: Vaisey, J., had pointed out in *Re Wilson* that such a task would be impossible.

Construction of section 13

The decision was, therefore, that the applicant was not entitled to succeed, and it was based up to this point on the general ground of the difficulty or impossibility of giving effect to a foreign adoption in administering our law of succession to property. But in the last paragraph of his judgment, as reported, Barnard, J., seemed to base his decision on another ground. He said that he had come to the conclusion that the Administration of Estates Act, 1925, as amended by the Adoption Act, 1950, must be construed strictly, and by s. 13 (4) of the latter Act the references to an adoption order in the preceding subsections were to refer to adoption orders made in Northern Ireland. With the sole exception of Northern Ireland, the adoption orders referred to in the Act were orders made by the courts in England and Scotland (to which country the 1950 Act also applies). The learned judge then expressed the view that he found it impossible to bring an adoption made under some foreign jurisdiction within the scope of s. 13 of the Act.

It seems to me that the reason adumbrated in these concluding observations of Barnard, J., in *Re Wilby* affords the complete answer not only to the application in that case but to the question which was raised in *Re Wilson* and to all similar questions of succession arising out of the relationship created by adoption. The primary requirement of s. 13 (1) of the 1950 Act is that an adoption order should have been made; it is from the making of the order that the rights of succession which that section creates flow. Apart from subs. (4) of s. 13, which is a strong indication of the restriction of the application of this part of this Act to adoptions made in accordance therewith within the jurisdiction of the United Kingdom, the Act makes it clear what "adoption order" means in this part of the Act. This expression is defined by s. 45 as having the meaning assigned to it by s. 1, and s. 1 provides that the court may, on the application by a person domiciled in England or Scotland, make an order "(in the Act referred to as an adoption order)" authorising the applicant to adopt an infant. "Court" for this purpose means a court having jurisdiction to make adoption orders under the Act (s. 45), viz., the High Court or any county court or court of summary jurisdiction within the jurisdiction of which the applicant or the infant resides at the date of the application (s. 8 (1)).

In view of these provisions it seems to me to be impossible to escape the conclusion that the only adoption which has any effect in creating rights of succession under s. 13 of the 1950 Act in the adopted person is an adoption effected by an order made under the Act by one of the courts which has jurisdiction under the Act to make such orders, the only exception or extension to this rule being that in subs. (4) of s. 13 which puts orders made in Northern Ireland under the enactments there mentioned on the same footing for this purpose as orders made in England or Scotland under the 1950 Act itself. If that is so, then *Re Wilson* could have been decided on the ground that the order in that case, an order of another court, was not within the Act, and *Re Wilby* on the ground that there never was any order of any kind at all, and questions of domicile and the like would never have arisen. If that is the true ground of decision in cases like this, the particular circumstances of any foreign adoption are immaterial, in cases, that is, where the question is whether the adopted person has any rights of succession to the property of the adopter or the converse.

"A B C"

OXFORDSHIRE DEVELOPMENT PLAN

On 30th December, 1955, the Minister of Housing and Local Government amended the above development plan by the allocation of an area of 6·1 acres in the Parish of Merton at present belonging to the War Department as a temporary residential caravan site and a number of consequential modifications. A certified copy of the plan as amended by the Minister has been deposited at the offices of the Clerk of the County Council in the County Hall, Oxford, and certified extracts of the plan as amended so far as the amendment relates to the under-mentioned district have also been deposited at the place mentioned below—

Ploughley Rural District.—Offices of the Clerk of the Ploughley Rural District Council, Waverley House, Bicester.

The copy or extracts of the plan so deposited will be open for inspection free of charge by all persons interested, between the hours of 9.30 a.m. and 5 p.m. on every weekday except Saturday when they may be inspected between the hours of 9.30 a.m. and 12 noon.

The amendment became operative as from 20th January, 1956, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 20th January, 1956, make application to the High Court.

COUNTY COUNCIL OF WESTMORLAND DEVELOPMENT PLAN

On 19th January, 1956, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at the County Hall, Kendal, and at the Town Clerk's Office, Kendal. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on weekdays except Saturday, and 9 a.m. and 12 noon on Saturdays. The amendment became operative as from 3rd February, 1956, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 3rd February, 1956, make application to the High Court.

Landlord and Tenant Notebook

CONTROL: "TRANSMISSION" AFTER SUSPENDED ORDER

On the death of a statutory tenant who has not kept up the payments required by a suspended or conditional order for possession which has not been enforced, a member of his family residing with him at the time of the death is entitled to a tenancy—but to one subject to the incidents imposed on the deceased's tenancy. This was decided in *Sherrin* v. *Brand* [1956] 2 W.L.R. 131 (C.A.); p. 34, *ante*.

One cannot really blame the draftsman of the headnote for stating that that tenancy was "transmitted"; in his judgment, Evershed, M.R., recognised that this was a "convenient but inaccurate phrase." Still, I think that if we are to find out what actually happened, and what fine distinctions were drawn, it would be as well to avoid using the expression without qualification.

And I propose to begin examination of the position with a reference to *Tickner* v. *Clifton* [1929] 1 K.B. 207, briefly mentioned and recognised as good law by the learned Master of the Rolls but, in my respectful submission, not altogether reconcilable with the new decision.

Death of defaulting tenant

In *Tickner* v. *Clifton* a protected tenant had died owing some six months' rent. The landlord sued the tenant's daughter (resident with him, etc.) for possession on the ground of non-payment of that rent, for the amount thereof, and for mesne profits. It was urged, on behalf of the landlord, that the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*) ("tenant" includes member of family, etc.), on which the defendant relied, merely placed the new tenant in the shoes of the old tenant. Swift, J. (with whom Acton, J., agreed), held that the defendant was *a* statutory tenant; that she had all the rights and liabilities of a statutory tenant; that her statutory tenancy began with her; and that she was not responsible for what went on before she became statutory tenant. There was nothing in the Act about a statutory tenant qualified by relationship and residence being liable to discharge the deceased tenant's liabilities.

Death after "absolute" order

More was learned about the nature of a s. 12 (1) (*g*) tenancy when *Bolsover Colliery Co.* v. *Abbott* [1946] K.B. 8 (C.A.) decided that the "let to him in consequence of that employment and he has ceased to be in that employment" of the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I (*g*) (i), was available against the son of a deceased tenant-employee, the son not himself being employed by the landlords: the son's rights depended on his being so employed. And this development was applied in *American Economic Laundry, Ltd.* v. *Little* [1951] 1 K.B. 400 (C.A.).

The facts of the last-mentioned case were that on 20th September, 1949, the plaintiff landlords obtained an order for possession suspended, under the Increase of Rent, etc., Restrictions Act, 1920, s. 5 (2) (replaced by the Rent, etc., Restrictions Act, 1923, s. 4 (2)), until 20th December of that year. The subsection authorises suspension of execution or postponement of date of possession, which may be subject to conditions, and discharge or rescission of the order if the conditions are complied with On the application of the tenant, an extension till 20th January, 1950, was granted; but he stayed on after that date, the landlords took no action, and on 3rd March obtained another extension—till 3rd April. He died, however, on 8th March; and the proceedings for possession were brought against his daughter, who had resided with him for twelve years before and up to 3rd March, 1950, and who contended that she was entitled to a s. 12 (1)(*g*) tenancy.

The court came to the conclusion that the deceased was not, once the order of 29th September, 1949, had been made, a tenant for the purposes of s. 12 (1) (*g*); *ergo*, the defendant was not a member of "the tenant's" family, etc. There was a fundamental difference between the position of one entitled to protection till successful proceedings were taken and one against whom an order for possession had been made. That, as was quickly added by Somervell, L.J., in his judgment, meant an absolute order; for the court recognised that under s. 5 (2) an order might take either of two forms. The county court judge might make an absolute order with execution suspended (as had been done in the case before them) or he might make a conditional order, inoperative as long as conditions (e.g., payment of rent or abatement of a nuisance) were fulfilled.

What would be the position when such a conditional order was made? "It may be that the result would be the same; it may be that it would be different" is what Somervell, L.J., said on the subject, adding: "At any rate, there seems to me to be scope for argument which would require serious consideration, that different results would ensue. Therefore, it is better to leave that question to be decided if and when it arises."

The question was raised, but its decision proved unnecessary, in *Mills* v. *Allen* [1953] 2 Q.B. 341 (C.A.)—the landlord had allowed the period of limitation to elapse, with the result that the tenant either retained or resumed her status.

Death after "conditional" order

But in *Sherrin* v. *Brand* it arose and had to be decided, and the decision has shown us not only that different results ensue, but also what results. It is the results themselves that may seem a little unexpected.

On 2nd December, 1953, the plaintiff had obtained an order for possession, which provided for payment of 13s. 7d. per week in addition to the current *rent*, against his then tenant, which concluded: "And it is ordered that the judgment for £36 4s. 8d. and costs [£11 8s.] shall not be enforced for so long as the defendant pays the said instalments of 13s. 7d. per week. And it is further ordered that the judgment shall cease to be enforceable when the arrears of rent, mesne profits and costs referred to above are satisfied." When the tenant died on 26th January, 1955, he had not kept up the payments; but the plaintiff had done nothing about enforcing the order. The defendant was a member of his family, etc., who would be qualified if the deceased was a tenant on 26th January, 1955.

The Court of Appeal were satisfied that this was a "conditional" order—the reference to current rent alone showed that the intention was that the deceased should

continue to be a tenant; and held that, as the order had never been executed, he had enjoyed that status when he died. The order differed in essential respects from that before the court in *American Economic Laundry, Ltd.* v. *Little*.

The immediate result was that the defendant was entitled to a tenancy. I think it is right to say that the labelling of that tenancy was not an easy task. Evershed, M.R., agreed that it was technically inaccurate to say that the deceased's statutory tenancy was "transmitted" to the defendant; both he and Birkett, L.J., used the "stepped into the shoes" metaphor; Romer, L.J., said that the defendant was entitled to *the* tatutory tenancy by succession.

The metaphor was the same as that employed by counsel for the unsuccessful landlord in *Tickner* v. *Clifton*, but what is a little difficult in *Sherrin* v. *Brand* is to find out exactly what may have to be done in the way of fitting or adjustment.

The "incidents"

The defendant became entitled to "the" tenancy, Evershed, M.R., said, "as it existed immediately before the death of *P* [the deceased statutory tenant], with and subject to all those incidents then attached to it, including those imposed by the court in the exercise of its powers under s. 4 (2) of the Act of 1923 . . . At the relevant date the so-called tenancy has, as the result of the order, an infirmity. . . ." Birkett, L.J., agreed: "Her tenancy cannot, I think, be better than the tenancy that Mr. *P* enjoyed." The defendant could not, Romer, L.J., said, claim the benefit of the tenancy and at the same time disclaim the incidents.

If that were all, one might expect that all the landlord would have to do would be to apply for a warrant of possession, leaving it to the defendant to try to obtain an extension. But no. "It is true, of course," said Evershed, M.R., "that the landlord cannot apply now in that action [the action against the deceased] for a warrant for possession. She must start *fresh proceedings* against the defendant." Later, "Her [the defendant's] right to become statutory tenant was . . . qualified. . . . That, however, is an aspect of the matter which has not been considered by the county court judge, and it would not be right for me to attempt to fetter his *statutory discretion* in regard to it." Birkett, L.J., was rather less definite: "Her tenancy cannot . . . be better than the tenancy that Mr. *P* enjoyed. . . . What the future may hold, I know not. It may be that an *application* will be made to the county court judge in respect of this tenancy. . . ." While Romer, L.J., after his reference to the inability to disclaim the incidents, proceeded: "Those incidents are that in addition to and as distinct from the standard rent, the specified weekly sums have to be paid until they have been fully discharged; and, on the defendant defaulting in *these payments*, it may be (I say no more) that the plaintiffs could obtain an order for possession in proceedings brought against her for that purpose."

It is hardly surprising that the reporter, at the conclusion of his report, says no more than "appeal allowed." It is clear that the defendant was held to be entitled to possession, observing and being entitled to the benefit of, as the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1) (referred to by Evershed, M.R.), provides, all the terms and conditions of the original contract of tenancy. Also, that she could not be substituted as defendant in the action against *P*. Also, that her statutory tenancy began when *P* died. And that, in so far as one can liken her position to one acquiring *damnosa hæreditas*, in her case there was a £47 12s. 8d. handicap. But whether she holds on the terms of the instalment order made, or may find quite a different order made, is not clear.

R. B.

HERE AND THERE

LAST STAND

It sometimes looks as if Scientific Technology is to be the religion of the future in England. It is taking shape with its promises of future beatitude, of bliss beyond the sky when space travel carries us into the seventy-seventh Heaven, its miracles, its mythology, its appeal to faith, its monastic establishments like Harwell, its cathedral power stations, its priesthood of the initiate with their sacred writings and their acolytes, also its apocalyptic possibilities. The great conversion is at work elsewhere, too, but in France Scientific Technology is not yet a religion. The French still worship their household gods and the local deities of the wood and the stream. You can put almost anything across the English if (rightly, preferably, but, if necessary, misleadingly) you clothe it in scientific plausibility. So once the deliberate spread of myxomatosis among the rabbits received the benediction of the Government scientists, opposition was paralysed as at a threat of ecclesiastical excommunication. It was not so in France where Professor Paul Armand Delille of the Academy of Medicine, who introduced the disease by injecting the virus into French bunnies, not only found himself abused as "the Attila of the rabbits" but had had to defend a test action brought by a farmer claiming £1,000 damages for loss of his rabbits. After two years the case had reached the Court of Appeal in Paris which has achieved a judgment of Solomon. It has awarded the plaintiff damages, but only £5, because the loss alleged was largely offset by improvement in his crops. Meanwhile it is interesting to observe that in England, in spite of the apparent odds against it, the rabbit has survived the poacher. Up and down the country the little furry *maquisards* have organised pockets of underground resistance. In the tangled thickets of Tyler's Green Common in Buckinghamshire, for example, it would take bulldozers to dislodge them. "Poachers would have kept their numbers down," says the clerk of the local parish council. "In the old days a rabbit would not dare to show itself. But there are no poachers left." The clerk did not even know a retired poacher. And what has killed that hardy race once hunted by gamekeepers and benches of country justices, generation after generation, with the same determination with which they hunted the rabbits? The Welfare State. If only the landowners of England had thought of it, they could have killed the poacher by kindness centuries ago. Once catching a rabbit for supper was part of the country labourer's way of life. Now he has leisure to enjoy the cultural advantages of television instead. So the poacher assumes in retrospect the rather spurious posthumous halo shared by Dick Turpin and Long John Silver. The alternative to the poacher is, of course, the government official. At Danbury in Essex, they'd rather have the poacher or the rabbit any day. Danbury Common is another pocket of rabbit resistance, and the

Ministry of Agriculture, planning a shooting war, have been cutting thirty-foot lanes through the lovely wild gorse and undergrowth to provide avenues of fire (like the boulevards Napoleon III cut through old Paris). The parish council are protesting vigorously at "the powers of the bureaucrat to charge in and smash up a place without giving the local people a chance to do something about it." Now, in France, there would be more than protests.

NOTHING FOR NOTHING

The technique of running a modern State depends on a nicely balanced appeal to cupidity and laziness, characteristics conveniently embedded in us all. Nobody really likes being ordered about, and the ordering of the community, which is government, is in essence just that. So in the old straightforward days before the invention of synthetics, government rested frankly on force, and in communities where men had somehow got hold of the idea of liberty and the value of the individual, incalculable, wayward human soul, the functions of government were accordingly reduced to a minimum. The modern State, on the other hand, says gently: "Look, we'll relieve you of this tiresome responsibility and that onerous duty and give you lots of lovely leisure to enjoy yourself—just yourself." It didn't catch on at once. As lately as fifty years ago, even the poor still had a proud repugnance to accepting public relief, but it's very different to-day. Now, the State can't give what it hasn't got. It is not a benevolent multi-millionaire with an inexhaustible bank balance. On the contrary it is a somewhat seedily embarrassed financier living from hand to mouth on credit. Hence it has somehow or other to persuade the recipients of its bounty themselves to provide the means of its benefactions, rather like a fraudulent solicitor who has applied capital to his own uses but pays the objects of the trust a dividend. That's where the technique of government comes in—giving people just enough all round to sustain the illusion of free benefits and a feeling that the game is worth while. Among the fortunate recipients of the current share-out are the farmers and under the Ministry of Food's fat-stock marketing scheme they are entitled to deficiency payments when beasts sold in the market fetch less than the government guaranteed price. Now a farmer in Northamptonshire recently sold six heifers in Rugby market. As a matter of fact they did fetch the guaranteed price, but the watchful care of a paternal State could not allow the farmer to feel that he had been forgotten; he was entitled to nothing in cash but he had still the right to a kindly thought. From the Ministry's Fatstock Marketing Division at Guildford, a hundred miles away, came a cheque for £0 0s. 0d., duly crossed and marked "not negotiable." It will not be negotiated or passed through the farmer's banking account; it will be framed. But by a clerical error the Ministry has produced an interestingly philosophic document. *Ex nihilo nihil fit.* Nothing comes out of nothing. When all the figures in all the government accounts have chased one another round all the columns, the ultimate profit to the community is zero because there cannot come out more than has been put in. Of course, there may come out less.

RICHARD ROE.

THE SOLICITORS (AMENDMENT) BILL

THE introduction to the House of Lords, with the usual picturesque ceremony, of the Rt. Hon. Sir Francis Raymond Evershed, the Master of the Rolls, created Baron Evershed of Stapenhill in the County of Derby, was an appropriate and opportune preliminary to the Second Reading of the Solicitors (Amendment) Bill on Tuesday of last week. The Second Reading of the Bill was moved by Lord Cohen on what he described as the first occasion on which it had fallen to his lot to address their lordships on other than the Report of the Appellate Committee. That fact did not detract at all from the confident and attractive way in which his lordship presented the Bill. In a twenty-minute speech, Lord Cohen gave a masterly survey of the present position, where anyone who wishes to get a clear picture of the solicitor's profession has to look not only at the principal Act of 1932, but at some eight or nine amending Acts. He indicated that the Bill before the House was intended to be followed, if passed by both Houses, by a Consolidation Bill which would greatly simplify the situation.

Lord Cohen then proceeded to run through the most important clauses of the Bill. He emphasised that the proposal to increase the maximum contribution to be made by solicitors (with some exceptions) to the Compensation Fund from £5 to £10 was required in order to ensure that there should be no risk of a deficit in the fund as might otherwise be the case, and so that a reserve might be built up.

He commented on recent correspondence in *The Times* and pointed out that the principle on which the fund was founded in 1941 was approved by an overwhelming majority of the profession, that so far all claims upon the fund had been met and that the Council of The Law Society would watch the position most closely and would not enforce the maximum contribution longer than was necessary. There were numerous exemptions and the full contribution was not required until six practising certificates had been taken out.

On cl. 2, which proposed that, with the concurrence of the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls, regulations may be made prescribing the requirements in regard to service under articles, legal education and examinations in place of the necessity under the present law of obtaining Parliamentary approval, Lord Cohen informed the House that the Master of the Rolls, who had so many responsibilities in connection with the profession, would later speak on and support the Bill.

The remaining clauses, dealing with numerous minor matters such as the clarification of the procedure for issuing practising certificates, the quorum required for the Disciplinary Committee, the powers of The Law Society to protect the client of a solicitor who had been suspended or struck off the Roll by making orders as to his property and papers, and the giving of wider powers to the Society in regard to the discharge of articles, were dealt with by Lord Cohen shortly but with great lucidity. He reminded the House that the Committee on Supreme Court Practice and Procedure had recommended that in contentious matters solicitors should be able to deliver lump sum bills under certain conditions as had for some thirty-five years been possible in non-contentious matters, and that the Bill provided that the recommendation should be carried into effect. Similarly the Bill proposed that, where under the present law one-sixth was taxed off a solicitor's bill as between solicitor and client and in consequence the solicitor had to pay the costs of the taxation, the fraction should, having regard to the 1953 Remuneration Order, be increased to one-fifth in respect of non-contentious business not regulated by scale.

Lord Silkin spoke next and, whilst not opposing the general principles of the Bill, said he thought it right to voice some criticisms. On grounds of equity, Lord Silkin felt that the flat rate of £10 which it was proposed to levy should be reconsidered. He thought it unfair that a solicitor with a very small turnover of money received on behalf of clients should have to make the same contribution as a large firm with a much larger turnover.

He further criticised cl. 2 relating to the substitution of regulations, approved by the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls, for statutory provisions, and felt that something more ought to go into the Bill so that the public and the profession should have the opportunity of making their views known before the regulations came into operation.

Lord Silkin was also not clear about the clause dealing with the delivery of lump sum bills. He reiterated that he was not against the Bill as a whole, but that he hoped his views would be considered before the next stage was reached.

Lord Evershed, the Master of the Rolls, asked the indulgence of the House in addressing it so soon after his introduction. He pointed out the special connection, dating from 1843, between the occupant of his office and the profession of solicitor, and went on to speak of his high respect for the zealous care with which The Law Society sought to maintain the honour and uphold the standards of the profession together with their keen sense of responsibility towards the general public.

In a short speech, Lord Evershed expressed his personal approval of the Bill. He spoke of the small proportion of "black sheep" in the profession—not more than a fraction of one-tenth of 1 per cent. out of 17,500 persons—and mentioned that comparable societies in Australia, South Africa, New Zealand and many other countries had similar provisions to those proposed in the Bill, designed to ensure continued confidence in the security and integrity of those who administered the law.

The Bill was welcomed by the Lord Chancellor on behalf of the Government. He took especial pleasure in congratulating Lord Evershed, who had been a fellow undergraduate at the same college with him, and felt The Law Society had been fortunate in having Lord Cohen as their advocate. He would consider all that was said in the debate.

Lord Douglas of Barloch joined in the congratulations and made the point that as every solicitor is obliged by law to have his client account audited, it would be easy to ascertain the amount going through that account if, as to which he expressed no opinion, it was decided to base the contribution to the Compensation Fund on a turnover basis.

Speaking as the only solicitor member of the Council of The Law Society in either House, Lord Milner of Leeds prefaced his remarks by thanking Lord Cohen on behalf of The Law Society for introducing the Bill, and paid a tribute to Lord Evershed on behalf of both the profession and the public for the care and consideration with which he had carried out his important responsibilities in regard to solicitors. He then dealt briefly with the criticisms made by his noble friend, Lord Silkin. Lord Milner pointed out that there was no relation between the amount passing through a client account and the possibility of defalcation and that it might well be that a small or one-man business might have a larger sum passing through the account at one time than a larger firm and that in some cases defalcations had occurred by reason of sums not having been paid into the client account at all so that the amount going through a client account was not necessarily an accurate criterion on which to base the contribution.

He emphasised that the fund was not administered as an insurance; it was set up and administered with a view to maintaining the honour and reputation of the profession.

In dealing with cl. 2 as to the making of regulations, Lord Milner had a sly dig at his colleague, Lord Silkin (sitting on the same bench), who had, he said, made more regulations than any other Minister when he was Minister of Town and Country Planning and would have been only too glad if they had not required Parliamentary approval. The regulations referred to in the Bill, however, were purely domestic, dealing with articles of clerkship, legal education, and so on, not affecting the public at all and Parliamentary approval was clearly not necessary.

A very agreeable and non-controversial debate was concluded by Lord Cohen commending the Bill to the House, and the Second Reading was passed *nemine contradicente*.

TALKING "SHOP"

January, 1956.

TUESDAY, 31ST

This last week has provided some agreeable linguistic exercises in the use of plural and aggregate terms, for the correct solution of which no prize is offered:—

(1) Can a sole director hold a "meeting" with himself?

(2) An aircraftman flies a service plane without authority and single-handed. Is he "a member of the crew of service aircraft" for the purpose of exonerating the underwriters from liability under a condition so phrased?

(3) Issue of the husband and the wife: are we to understand "issue of the said intended marriage" or "issue of either party by the said intended or any other marriage"?

February, 1956.

WEDNESDAY, 1ST

I am entertained by a draft settlement of the breezy type drafted on the commercial pattern, a document of immense length and obscure trend. The draftsman makes short work of the rules relating to remoteness and accumulation. As for the first, the trust period is to terminate at the expiration of twenty-one years from the death of the last survivor of the issue of His late Majesty King Edward VII. In all loyalty, that should be long enough for anybody. Section 164 of the Law of Property Act, 1925, is treated in an even more rugged fashion. The trustees are directed to accumulate income for so long a period as is permitted by law. Since the settlor is a limited company and none of the recognised periods can conceivably apply, the term "period" seems to be something of an over-statement. But perhaps we need not bother with that, for the primary objects of the settlement are so vague that it will clearly have to be redrafted from start to finish.

THURSDAY, 2ND

The general questions that people ask as requisitions are sometimes a little peculiar. "Did the deceased in his lifetime enter into any transaction or make any gift or other disposition or release or determine any life or other interest or otherwise deal with any property, whether the subject of these trusts or not?" I am asked to say. And how, I should like to know, did he contrive to manage his affairs if he did not? The only basis that I can think of is that he might have been maintained from birth to death at the expense of a third party. Even a twopenny-halfpenny bus ride comes within the scope of the question. Perhaps if he stayed in bed all day? But he would have to eat sometimes, and his mortgage interest would have been totting up just the same. After much deliberation, I supply the answer, "Yes." But that sounds uncompromising, so I add that we will supply further particulars if the inquirers will say what type of transaction interests them. There were several not in the twopenny-halfpenny bus ride class. A five-year limit on the inquiries (if directed to death duties) would lighten our labours. It is a pity that as a general rule people do not take half the trouble in drafting their requisitions that one has to expend upon replying to them.

FRIDAY, 3RD

It has been said (but by whom, I cannot trace) that—

Girls who give advice to others
Go to proms. with their own brothers;

and doubtless some fate of comparable severity is in store for solicitors who rashly pass strictures on accepted professional practice. But I will court the risk and say that nothing seems more absurd than the bill of costs, not intended for taxation, which is made out as though it were. For

example, Messrs. Champerty & Maintenance, who have pestered us for successive undertakings to pay their costs, finally produce their bill, which covers a foolscap sheet of single-spaced typing and the whole gamut of Mr. Champerty's labours in our behalf. From the time that he hangs up his hat until the time that he takes it down we are spared nothing, not even the old clichés such as "attending you therewith and thereon." Braced for the shock, we turn over the page, not unconscious of Escrow's severe comments on unqualified undertakings, and learn that the staggering total of our indebtedness is two guineas. No wonder clients laugh. They know, nearly as well as we do, how to spy out the nakedness of the land. The system should have perished of its own indignity years ago.

Week-end Reflections

The blandness of the bureaucracy and of the near-bureaucracy may be a source of innocent merriment, bewilderment or exasperation according to the standpoint and temperament of the victim. Bureaucrat *A* is happy to direct *B's* affairs. *A* is happy, *B* is not. After the manner of the nightingale, *A* is too happy in his happiness; seldom does it occur to him that *B* does not share in it.

Take, for example, a certain letter received from a lady who describes herself as "for" the Midland Regional Officer of the Nature Conservancy Department of Botany, writing from an office located in a Midlands university. She heads her letter "National Parks and Access to the Countryside Act, 1949," and plunges forthwith *in medias res*. "In accordance with the above Act," we are told, "the Nature Conservancy has scheduled Rookery Wood, in the County of Blank, as a site of scientific importance. This has now been mapped and the area made known to the Town and Country Planning Authority. *All that remains* [italics supplied] is to inform the owner of the interest in his land and this will eventually be done by our London headquarters." At this point there is, as our American cousins say, a "period," followed by the intelligence (which, in view of all this mapping and interest shown in our client's wood, does seem remarkable) that the writer does not, in fact, know who the owner is.

I am much taken with the phrase "all that remains." To the scientific or other importance (if any) of our client the writer is all too plainly indifferent; what matters is the scientific importance of his wood. The owner, viewed from the chill and distant heights of Room 9 in the university building, is at best a botanical specimen and "eventually" he will be the subject of a suitable mopping-up operation and dried out (and if necessary "up") by the superior blotting processes of London headquarters.

But let us put uncharity aside and look at it from the lady correspondent's viewpoint. Should not our client be pleased and proud to learn of the official promotion of his wood? Yesterday it was just Rookery Wood; now it is a "site of scientific importance." Well, perhaps he should. I cannot tell, because he died some months ago and in more senses than one is out of the wood. Then, as for the curiosity of his executors, who would like to know *why* it is of scientific importance, and several other things about it ("so what?" will suffice to cover them all), perhaps she might say that you cannot be too careful when you deal with unscientific people such as landowners. Suppose that (ornithology permitting) you were to say to such a person, "You have a rare line in shrikes," the chances are that he would shoot them with gun or camera or advertise and crowd them to the point of special precautions, such as those taken to protect the bee-eaters last summer. Or, suppose that science were represented in person by a well-attired woodbine, you would have only to breathe the word, and as like as not some philistine would pick the specimen and put it in a vase in the downstairs cloak-room.

It is curious that people who can find the time to map out our late client's wood and log its flora and fauna (regardless of his sitting pheasants whose *bona* are thereby put in jeopardy of becoming *vacantia*, but then pheasants are of no scientific importance) leave themselves so little of it to study the psychology of landowners. It may well be that, in the Nature Conservancy's scheme of things, woods are of more interest than their owners. Allowing that they may be right in this belief, it seems a little naïve to expect the owners themselves to subscribe to it.

"Escrow"

Development Plan for the North Riding of Yorkshire

On 17th August, 1955, the Minister of Housing and Local Government approved (with modifications) the above development plan. The plan relates to land situate within the Administrative County of the North Riding of Yorkshire and includes a town map for the South Tees-side area of the Riding which relates to the Boroughs of Redcar and Thornaby-on-Tees, the Urban Districts of Eston and Saltburn and Marske-by-the-Sea, and parts of the Urban District of Guisborough and of the Rural District of Stokesley. A certified copy of the plan as approved by the Minister has been deposited at the County Hall, Northallerton. A certified copy of the plan as approved by the Minister (excluding the South Tees-side area town map) has been deposited at the Area Planning Office, 22 St. Hilda's Terrace, Whitby. A certified copy of the town map for the South Tees-side area has been deposited at the Area Planning Office, Westgate, Guisborough. Certified extracts of the town map for the South Tees-side area have been deposited at the offices of the following local authorities: Redcar Borough Council, Thornaby Borough Council, Eston Urban District Council (office of the Engineer and Surveyor, Normanby Road, South Bank), Saltburn and Marske-by-the-Sea Urban District Council. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive, and 9 a.m. to 12.30 p.m. on Saturdays. The plan became operative as from 20th January, 1956, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 20th January, 1956, make application to the High Court.

The Committee on Administrative Tribunals and Inquiries will take oral evidence from Government Departments during February and March. The hearings of evidence will be open to the public and will be held at Weavers House, 14–15 Stratford Place, W. Hearings will take place on 22nd and 23rd February from 10.45 a.m. to 12.45 p.m. and from 2.30 to 4.30 p.m.

Double Taxation—Federation of Rhodesia and Nyasaland

The terms of the double taxation agreement between the United Kingdom and the Federation of Rhodesia and Nyasaland, which was signed on 25th November, 1955, are contained in a Schedule to a draft Order in Council published on 31st January.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

MURDER: VIEW: PRESENCE OF WITNESSES UNOBJECTIONABLE

Karamat *v.* R.

Lord Goddard, C.J., Lord Tucker, Lord Somervell of Harrow. 24th January, 1956

This was an appeal, by special leave, by Karamat from a judgment of the Court of Criminal Appeal of British Guiana, dated 24th February, 1955, which had dismissed his appeal from his conviction before Hughes, J., and a jury, at the Criminal Sessions for the County of Demerara for the murder by shooting of one Haniff Jhuman on 27th September, 1953. The appellant's father owned an estate which adjoined the estate belonging to Haniff Jhuman's father. Cattle straying from Jhuman's land had damaged crops on the appellant's father's estate on a number of occasions. Ill-feeling sprang up and culminated in the shooting. During the course of the trial, and before the case for the prosecution was finally closed, the trial judge, pursuant to the powers conferred by s. 44 of the Criminal Law (Procedure) Ordinance of British Guiana, which also provided that the practice and procedure in criminal trials, including that relating to juries, should conform as nearly as possible to that which obtained in England, directed a view of the locality. At the view witnesses who had already given evidence at the trial were present, and any juror who wanted to ask a question put it through the judge, who was present the whole time and throughout had control of the proceedings, and the witness gave a demonstration as the answer, counsel being then invited by the judge to ask questions through him, but no cross-examination was allowed. The appellant had stated that he did not wish to attend the view, and he did not. He now appealed against his conviction on the ground, *inter alia*, that the "view" was not one authorised by the Ordinance when witnesses attended and indicated places by pointing or by words. His first line of defence at the trial was that he had fired in self-defence. He had been sentenced to death.

LORD GODDARD, C.J., giving their lordships' reasons for having dismissed the appeal at the conclusion of the appeal on 14th December, 1955, said that witnesses who had already given evidence could attend at the view; they took part in it in the sense of placing themselves in the positions in which they said they had been at the material times or indicating the positions of others, and that was unobjectionable—there was nothing to show that any more than that took place. If a view were ordered at some stage of a criminal trial in England, it would be no objection to a witness attending and taking part that he had already given evidence. A view was part of the evidence; it was in substitution for or supplemental to plans, photographs and the like. It was eminently desirable that the judge should be present. So long as the witnesses taking part were recalled to be cross-examined, if desired, the accused person was not in any way prejudiced, but it was essential that every effort should be made to see that witnesses made no communication to the jury except to give a demonstration. Further, the absence of the appellant from the view afforded no ground of objection, for the holding of the view was part of the trial, and under s. 167 (2) of the Ordinance the court had power to allow the accused—as it did here—to be absent during part of the trial. In addition, if an accused person declined to attend a view he could not afterwards raise the objection that his absence of itself made the view illegal and a ground for quashing the conviction, if one followed, though he could object if any evidence were given outside the scope of the view as ordered. The appeal failed on all grounds.

APPEARANCES: *Bernard Gillis*, Q.C., and *J. Lloyd-Eley* (*Hy. S. L. Polak & Co.*); *J. G. Le Quesne* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 412**

CHARTERPARTY: NOMINATION OF UNSAFE PORT: LIABILITY OF CHARTERER FOR DAMAGE

Reardon Smith Line, Ltd. *v.* Australian Wheat Board

Viscount Simonds, Lord Oaksey, Lord Radcliffe, Lord Keith of Avonholm, Lord Somervell of Harrow. 26th January, 1956

Appeal from the High Court of Australia.

The motor vessel *Houston City*, chartered by the respondents, the Australian Wheat Board, from the appellant shipowners, Reardon Smith Line, Ltd., was by the terms of the voyage charterparty to proceed "to one or two safe ports" in Western Australia and there load "at such safe dock, pier, wharves, and/or anchorage as ordered" by the charterers. The vessel was ordered to Port Geraldton to load a cargo of wheat in bulk. At the port a hauling off buoy, for use in keeping a vessel off the wharf in northerly winds, was missing, and in the centre of a waling piece or fender on the wharf itself some fifty feet was missing. Whilst the *Houston City* was loading a gale sprang up and the ship rolled and damaged herself and the wharf. The shipowners claimed damages from the charterers for breach of their contractual obligation to nominate a safe port and berth. It was found in the courts below that the port or wharf was unsafe, and that the master had acted reasonably in accepting the nomination. The Supreme Court of Western Australia found in favour of the present appellants. On appeal the High Court of Australia, Dixon, C.J., dissenting, found for the respondents.

LORD SOMERVELL OF HARROW, giving the judgment, said that there were no grounds for disturbing the findings that the port or wharf—it was immaterial which for the purposes of this case—was unsafe, and that the master had acted reasonably. The words of the clause, in their lordships' opinion, were an undertaking by the charterers to nominate a safe port and a safe dock, etc., within that port. The charterer was given a choice, within limits prescribed, as to where he would have his cargo available for loading. It seemed natural that he should give at any rate some undertaking as to its safety and that the owners should be entitled to rely on the place nominated being safe. If he broke that undertaking and nominated an unsafe port and the ship was damaged through going there he would be liable for the damage, subject, of course, to possible questions of remoteness or *novus actus interveniens*. That was the construction assumed by Bailhache, J., in *Limerick S.S. Co.* v. *Stott & Co.* [1921] 1 K.B. 568. The authorities supported that construction; they were reviewed by Devlin, J., in *G. W. Grace & Co.* v. *General Steam Navigation Co., Ltd.* [1950] 2 K.B. 383. Neither *Samuel West, Ltd.* v. *Wrights* (*Colchester*), *Ltd.* (1935), 40 Com. Cas. 186, nor *The Pass of Leny* (1936), 155 L.T. 421, lent any effective support to the respondents' construction. After the hearing of the present case in the High Court the issue under consideration came before Devlin, J., and the Court of Appeal (*Compania Naviera Maropan S/A* v. *Bowaters Lloyd Pulp and Paper Mills, Ltd.* [1955] 2 Q.B.D. 68): the decision of the High Court in the present case was cited and the court felt unable to adopt the majority decision and approved the chief justice's dissenting judgment. On the general and difficult question as to the position of the master if and when he realises or suspects danger or the possibility of danger, their lordships would adopt the view held by Devlin, J., at [1955] 2 Q.B.D. 68, at p. 77. On the question of construction, both in principle and on authority, their lordships were of opinion that the appellants succeeded. The damage flowed from the breach. Appeal allowed, and order of Wolff, J., in the Supreme Court restored.

APPEARANCES: *A. A. Mocatta*, Q.C., and *John Donaldson* (*Holman, Fenwick & Willan*); *Sir Garfield Barwick*, Q.C., and *Michael Kerr* (*Coward, Chance & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 403**

Court of Appeal

FACTORY: DANGEROUS MACHINERY: APPLICABILITY OF REGULATIONS TO CIRCULAR SAW WHEN NOT SAWING

Stringer *v.* Automatic Woodturning Co., Ltd.

Singleton, Jenkins and Hodson, L.JJ. 13th January, 1956

Appeal from Oliver, J. ([1955] 1 W.L.R. 971; 99 SOL. J. 563).

The Factories Act, 1937, provides by s. 14 (1): "Every dangerous part of any machinery . . . shall be securely fenced . . . Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be

secured by means of a fixed guard, the requirements of this subsection shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part." The plaintiff, a girl aged eighteen years, who was employed by the defendants at their factory, was engaged in cutting lengths of timber by means of a circular saw, and having cut a number of such lengths was removing, by means of a short stick, some off-cuts from the side of the bench where they had accumulated when her fingers came into contact with the revolving saw, some inches of which were exposed, and she sustained injuries. It was admitted by counsel for the plaintiff, and so found by the trial judge, that the saw had been fenced in accordance with the requirements of reg. 10 (*c*) of the Woodworking Machinery Regulations, 1922, but the plaintiff contended that the defendants were in breach of their common-law duty to safeguard their employees, because at the side of the machine from which the off-cuts had to be removed some inches of the revolving saw were exposed. Oliver, J., held that compliance with the regulations would have protected the defendants if the accident had occurred while sawing was in progress, but that the regulations did not apply at other times, so that the defendants had committed a breach of s. 14 (1). He did not deal with the issue of negligence. The defendants appealed.

SINGLETON, L.J., said that the defendants contended that once it was admitted that they had complied with the regulations, no question could arise under s. 14 (1), a submission based on *Miller* v. *William Boothman & Sons, Ltd.* [1944] 1 K.B. 337, approved in *John Summers & Sons, Ltd.* v. *Frost* [1955] A.C. 740. Oliver, J., had held that the facts did not fall within *Miller's* case, *supra*, as sawing was not taking place at the time, basing himself on *Dickson* v. *Flack* [1953] 2 Q.B. 464 and *Benn* v. *Kamm & Co., Ltd.* [1952] 2 Q.B. 127, the latter case deciding that the Act applied to such dangerous parts of a machine as were not covered by regulations. In the present case, *Miller's* case, *supra*, applied; the defendants escaped liability under the Act by virtue of their compliance with the regulations, and the decision of Oliver, J., could not be supported. On the evidence, however, there appeared to be certain unsatisfactory features in the case, which indicated that the issue of negligence had not been properly dealt with, and the proper course would be to direct a new trial on the issue of negligence. Appeal allowed. New trial ordered.

JENKINS and HODSON, L.JJ., agreed.

APPEARANCES: *H. I. Nelson*, Q.C., and *J. M. Davies* (*J. W. Davies*); *G. G. Blackledge*, Q.C., and *J. M. Kennan* (*Vizard, Oldham, Crowder & Cash*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 138**

LANDLORD AND TENANT: APPLICATION FOR NEW LEASE: BOMB-DAMAGED BUSINESS PREMISES: AGREEMENT FOR TOTAL RECONSTRUCTION BY BUILDING LESSEE

Gilmour Caterers, Ltd. *v.* St. Bartholomew's Hospital Governors

Denning, Morris and Parker, L.JJ. 16th January, 1956

Appeal from Westminster County Court.

The Landlord and Tenant Act, 1954, provides by s. 30: "(1) The grounds on which a landlord may oppose an application [for a new tenancy under the Act] . . . are such of the following grounds as are stated in the landlord's notice . . . that is to say—(*f*) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding . . . or to carry out substantial work of construction on the holding . . . and that he could not reasonably do so without obtaining possession of the holding." The landlords were the owners in fee simple of two adjoining premises in Holborn, which had suffered bomb damage, one of which remained derelict while the other, after a partial reconstruction, was occupied under a sub-lease by the tenants, who carried on a restaurant business. The tenants, whose sub-lease was due to expire in 1955, applied to the landlords for a new lease, and on their refusal made application to the county court for the grant of a new lease under the provisions of the Landlord and Tenant Act, 1954. The landlords had made an agreement with a third party to grant him a building lease of the two premises for a term of forty-eight years, upon condition that he cleared the site and erected a new building "in conformity in every respect with the plane elevations and sections and specifications already approved of and signed by the surveyor for the time being of the lessors and under the inspection and to the satisfaction of such surveyor." The landlords opposed the application on the ground that they required possession in order to demolish and reconstruct the premises, under the provisions of s. 30 (1) (*f*) of the Act. The county court judge refused the tenants' application. The tenants appealed.

DENNING, L.J., said that the condition of the premises was so bad that they ought to be demolished and reconstructed in the near future. The landlords had considered various ways of doing it, and had decided not to employ contractors, but to grant a building lease under which reconstruction would be effected in a manner subject to their control and approval. The tenants objected that s. 30 (1) (*f*) required that the landlords must do the work themselves or by their immediate servants or agents, and that reconstruction by a building lessee would not satisfy the subsection; but that was much too narrow an interpretation of the subsection; a building lease was a way of paying for the work, and the subsection was satisfied whether the work was done directly by a contractor or less directly through a building lessee. The appeal should be dismissed.

MORRIS, L.J., agreed.

PARKER, L.J., agreeing, said that the tenant's proposition that the reconstruction must be done by the landlord, or his servants and agents, would exclude the ordinary case of the employment of a building contractor. Appeal dismissed.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *L. I. Stranger-Jones* (*Hy. S. L. Polak & Co.*); *H. J. Phillimore*, Q.C., and *R. H. W. Dunn* (*Wilde, Sapte & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 419**

Chancery Division

COMPANY: OFFER TO PURCHASE ALL SHARES: PERIOD FOR OFFER TO REMAIN OPEN

***In re* Western Manufacturing (Reading), Ltd.**

(Application of G. H. Miles)

Wynn Parry, J. 29th November, 1955

Adjourned summons.

The Companies Act, 1948, provides by s. 209 (1): "Where . . . a contract involving the transfer of shares . . . in a company (in this section referred to as 'the transferor company') to another company . . . (in this section referred to as 'the transferee company') has, within four months of the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved . . . the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares, and . . . the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company . . ." On 11th February, 1955, *W.*, Ltd., issued to its shareholders a circular announcing a scheme for its amalgamation with *A.*, Ltd., whereby *A.*, Ltd., would acquire the shares in *W.*, Ltd. The circular provided that the offer was conditional on being accepted on or before 4th March, 1955, or such later date as might be agreed between the two boards, in respect of not less than 90 per cent. of the issued shares of *W.*, Ltd. By agreement the date for acceptance was extended and, in the result, the holders of over nine-tenths in value of the shares in *W.*, Ltd., accepted the offer. The applicant on this summons held 3,585 shares out of 2,131,104; and in due course *A.*, Ltd., served on him, pursuant to s. 209 (1), a notice that it desired to acquire his shares on the terms of the offer contained in the circular. By this summons he asked for an order that *A.*, Ltd., was not entitled to acquire his shares in *W.*, Ltd., or any of the shares therein, on the terms of the scheme or contract, notwithstanding that the same had been approved by the holders of nine-tenths in value of the shares whereof the transfer was

involved. For the applicant it was contended that the offer had to remain open for four months and that it was issued on 11th February, 1955, and itself expressly provided that it must be accepted by 4th March, 1955. The circular stated, as a guide to the shareholders, the middle prices of the Stock Exchange on certain dates.

WYNN PARRY, J., said that the applicant had put forward two objections: first, that under s. 209 the offer had to remain open for four months, whereas in the present case the period was much shorter; and, secondly, that the offer was not a fair one or one on which the court would make a compulsory acquisition order. It was argued that "within four months after the making of the offer" denoted a fixed period, during the whole of which the offer must remain open, and not a maximum period. Reliance was had on *Rathie* v. *Montreal Trust Co.* (1953), 2 S.C.R. 204; 4 D.L.R. 289, which dealt with the corresponding section in the Canadian Companies Act, 1934. In that case, two groups of judges of the Supreme Court agreed that the offer must remain open for four months; the first group on the ground that Parliament intended to provide a sufficient period in which shareholders might make investigations; the second group on the ground that otherwise the postponement of the right to proceed by notice against the dissentient shareholder did not make sense. That decision was worthy of great respect, but in the light of *In re Evertite Locknuts, Ltd.* [1945] Ch. 220 and *In re Press Caps, Ltd.* [1949] Ch. 434, it was difficult to attribute to Parliament such an intention. The phrase, construed by itself, indicated not a fixed period but a maximum period during which the approval of the offer by the requisite number of shareholders must take place; and that view was confirmed by a study of the language and provisions of s. 209 as a whole. The phrase, accordingly, indicated a maximum period, and the notice served on the applicant was a valid notice. On the question of fairness, Maugham, J., in *In re Hoare & Co., Ltd.* (1933), 150 L.T. 374, said that it was impossible to suppose that the court, in the absence of very strong grounds, was to be entitled to set up its own view of the fairness of the scheme in opposition to a large majority of the shareholders. In the present case the proposals were in accordance with the recommendations of an eminent firm of merchant bankers; and the middle market quotation was, in general, a sounder guide of the value of shares than actual markings. The objections of the applicant failed. Summons dismissed.

APPEARANCES: *R. B. S. Instone* (*Daybell, Watts-Jones & Co.*); *P. J. Sykes* (*Slaughter & May*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 437

BANKRUPTCY: HUSBAND AND WIFE: MAINTENANCE PAYMENTS: "INCOME" OF BANKRUPT VESTING IN TRUSTEE: APPLICATION TO COURT REQUIRED

***In re* Tennant's Application**

Upjohn, J. 19th January, 1956

Interpleader summons.

By an agreement made in 1940 on dissolution of marriage, a husband covenanted to pay his ex-wife a monthly sum of £50. In 1952 the wife was adjudicated bankrupt; she obtained her discharge in 1955 subject to two years' suspension. The husband took out the present interpleader summons asking for the direction of the court as to how, as between the wife and her trustee in bankruptcy, he should dispose of the monthly payments under the deed of 1940.

UPJOHN, J., said that it seemed to him that the matter was concluded by the judgment of the Court of Appeal in *In re Landau* [1934] 1 Ch. 549. In that case, which was again concerned with a payment made on a divorce—it was made as an order of court but by consent—a substantial sum of about £2,400 per annum was payable by the respondent to the petitioner, and it was held that that sum was "income" of the bankrupt for the purposes of s. 51 (2) of the Bankruptcy Act, 1914. If the matter had been *res integra*, it would have seemed to him that there would be something to be said for the view that subs. (2) of s. 51 was referring to the case where the "income" or "salary," as it might be, did not vest in the trustee in bankruptcy under the Bankruptcy Act: such, for instance, as a contract for personal services or possibly something as vague as future earnings, or something of that kind. Indeed, that was the view taken in some of the earlier authorities. But it was plain that the later authorities took a different view, and that subs. (2) applied equally to income or salary which vested in the trustee as to income or salary which did not. Authority for that was again to be found in *In re Landau, supra*. The question was: how did the subsection work in any case where the trustee would *prima facie* seem to be in a position to claim the property in question on the bankruptcy and ask the person bound to make these monthly payments to pay all future sums to him? The answer to that was to be found partly in a decision to which he would refer in a moment, and partly in the section itself. If one read the subsection in the light of the authorities establishing that it applied to an income vested in the trustee in bankruptcy, the position was this: where a bankrupt was in receipt of a salary or income or was entitled to any part of it, the court, on the application of the trustee, should make such order as it thought fit for the payment of the salary to the trustee. That would seem to indicate that, although the right to the income vested in the trustee, he must, in order to reduce it into possession, obtain some order of the court in bankruptcy ordering that the income, or some part of it, be paid to him. It was noteworthy that only the trustee could make the application; the bankrupt had no such right. That view was confirmed by the decision of the Court of Appeal in one of the earlier cases: *Ex parte Huggins; in re Huggins* (1882), 21 Ch. D. 85. Section 51, therefore, controlled the vesting of the property in the trustee under ss. 18 and 38, and although the payments vested in the trustee in bankruptcy, they remained payable to the wife until the trustee applied to the court that they should be paid to him. Declaration accordingly.

APPEARANCES: *D. H. Mervyn Davies* (*Vizard, Oldham, Crowder & Cash*); *Edward Grayson* (*C. Butcher & Simon Burns*); *Peter Oliver* (*Stafford Clark & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 128

CHARITY: WHOLE RESIDUE GIVEN FOR SPECIFIC CHARITABLE PURPOSE: SURPLUS APPLICABLE CY-PRÈS

***In re* Raine, deceased; Walton *v.* A.-G. and Another**

Vaisey, J. 24th January, 1956

Adjourned summons.

A testatrix by her will, after making certain specific and pecuniary bequests, including a gift of £400 for providing a stained glass window in the church at *R*, left her residue "for the continuance of the seating of the church at *R*." This was an interesting old church containing a number of oak pews. The net sum available was some £2,550, out of which £411 was expended on extending the pews so far as was practicable and proper. A summons was taken out to ascertain whether the balance should be expended *cy-près* or devolved as on a partial intestacy.

VAISEY, J., said that it had been contended that, unless there was a general charitable intent, the *cy-près* doctrine ought not to be applied. That was well established as a general proposition, and was exemplified by such cases as *In re Connolly* (1914), 110 L.T. 688, and *In re Stanford* [1924] 1 Ch. 73, where the charitable gifts were in the form of pecuniary legacies. Different considerations arose when the charitable gift was itself residuary, and it was suggested in Tyssen on Charitable Bequests, 2nd ed., at p. 184, that *cy-près* would apply "where there is a general intention to devote the whole subject of the gift to charity, and the income of property devoted to a defined charity is more than is required for the purposes." In the present case there was not a general charitable intent in the wider and vaguer significance of that expression, but the will indicated a general intention that the whole residue should be devoted to a charitable purpose. It was obvious that the testatrix wanted the whole of her residue to be devoted to the church; from that was to be inferred an intention to part with the whole of her property in favour of a charity, which constituted a charitable intention which could only be carried out *cy-près*; such a proposition received support from *In re King* [1923] 1 Ch. 243 and *In re Royce* [1940] 1 Ch. 514. There would be a declaration that the surplus was to be applied *cy-près*, and a direction for a scheme. Order accordingly.

APPEARANCES: *Hubert Rose, J. Brightman* (*Champion & Co.*, for *Dawson, Arnott & Pickering*, Barnard Castle); *N. C. H. Browne-Wilkinson* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 449

Queen's Bench Division

RIGHT OF WAY OVER PRIVATE RAILWAY BRIDGE: PRESUMED DEDICATION BY LONG USER: WHETHER ULTRA VIRES RAILWAY AUTHORITY

British Transport Commission *v.* Westmorland County Council

Same *v.* Worcestershire County Council

Lord Goddard, C.J., Stable and Ashworth, JJ.

23rd January, 1956

Cases stated by Westmorland and Worcestershire quarter sessions.

In the Westmorland case, a footpath across a bridge spanning a railway line constructed in 1847 under powers conferred by the Kendal and Windermere Railway Act, 1845, was marked on a provisional map prepared by a county council pursuant to the National Parks and Access to the Countryside Act, 1949, as a public right of way as at the 1st November, 1952. The British Transport Commission, the railway owners, applied to quarter sessions under s. 31 of the Act for a declaration that no right of way existed over the bridge. Quarter sessions found that the bridge had been constructed solely as a private accommodation bridge for the benefit of the owners and occupiers of the lands on either side of the railway line and severed thereby, and that it had never been expressly dedicated to the public, but that its use by the public over a period of more than twenty years had been such as to raise a presumption that it had been dedicated. They found that the continued existence of the bridge would not endanger the running of the trains nor the operation of the railway, and held that the footpath had been dedicated. The commission appealed on the ground that such presumptive dedication would be *ultra vires* as interfering with their statutory powers and duties.

LORD GODDARD, C.J., delivering the judgment of the court, said that the maintenance of the bridge did not interfere with the operation of the railway or involve the commission in undue expense. The points taken were: (1) that a statutory body empowered to take land for public purposes could not use its powers so as to impose on itself an additional burden unnecessary for the performance of its functions, and (2) that such a body entrusted by statute with special powers for the common good could not deprive itself of those powers. The authorities on the subject were summarised in *Birkdale District Electric Supply, Ltd.* v. *Corporation of Southport* [1926] A.C. 355, the *locus classicus* being *R.* v. *Leake* (1833), 5 B. & Ad. 469, where it was said that if a dedication was incompatible with the public purpose for which the land was vested in a statutory body, that body could not in law make such a dedication; otherwise, if a dedication was not so incompatible, there were numerous cases showing that a railway company could grant an easement or dedicate a path. The question whether a dedication was inconsistent or incompatible with the statutory purpose was one of fact in every case; quarter sessions had so treated it, and no one could say that allowing a path to cross the land at this place by means of a bridge was inconsistent with the use as a railway of the land. If the commission's contention was right, it was strange that it had never been advanced before. The appeal would be dismissed, and the appeal also in the Worcestershire case, which was admittedly indistinguishable. Appeals dismissed.

APPEARANCES: *Sir F. Soskice*, Q.C., and *J. P. Widgery* (*M. H. B. Gilmour*); *M. Rowe*, Q.C., and *E. S. Temple* (*Sharpe, Pritchard & Co.*, for *K. S. Himsworth*, Kendal, and *W. R. Scurfield*, Worcester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 428

NATIONAL INSURANCE: CONVICTION FOR FAILING TO PAY ONE CONTRIBUTION: JURISDICTION TO ORDER PAYMENT OF OTHER ARREARS

Shilvock *v.* Booth

Lord Goddard, C.J., Hilbery and Stable, JJ.

27th January, 1956

Case stated by Sutton Coldfield justices.

The National Insurance (Contributions) Regulations, 1948, provide by reg. 19: "(1) In any case where . . . an insured person has been convicted of the offence under subs. (6) of s. 2 of the Act of failing to pay a contribution, he shall be liable to pay to the National Insurance Fund a sum equal to the amount which he failed to pay . . . (3) On any such conviction . . . if notice of intention to do so has been served with the summons or warrant, evidence may be given— . . . (*b*) in the case of an insured person (other than an employed person), of the failure on his part to pay other contributions as such an insured person during those two years; and on proof of such failure . . . the insured person shall be liable to pay to the National Insurance Fund . . . a sum equal to the total of all the contributions under the Act, . . . which he is so proved to have failed to pay . . . (5) Any sum ordered to be paid to the National Insurance Fund . . . under this regulation shall be recoverable as a penalty." The defendant pleaded guilty to the offence of failing to pay a contribution which he was liable to pay under the National Insurance Act, 1946, as a self-employed person contrary to s. 2 (6). The prosecutor, having served with the summons a notice of intention to prove the defendant's failure to pay other contributions, proved at the hearing that the defendant had failed to pay contributions amounting to £17 8s. 7d. The prosecutor asked the justices to make two orders, one, under reg. 19 (1), ordering the defendant to pay to the National Insurance Fund 7s. 5d. in respect of the contribution for which he had been convicted, and the other under reg. 19 (3) ordering the defendant to pay £17 8s. 7d. in respect of the arrears of contributions. The justices refused on the ground that they had no power to make the orders. The prosecutor appealed.

LORD GODDARD, C.J., said that the provisions of reg. 19 seemed to be perfectly intelligible, and to be akin to the practice of taking into account other offences. On proof of one offence, an order could be made ordering the payment of other contributions. If it was established that a defendant was liable on one occasion, it followed that he ought to have paid and might be liable to be prosecuted for every one of the subsequent occasions, and should be held liable by the justices to pay. When an Act or regulation said that a person who failed to do something should be liable to a fine, that meant that he would be fined. It was clear that the regulation provided a summary and cheap method of recovering such contributions without further proceedings. The case must go back with a direction that the justices should make an order that the defendant should pay the contributions in arrear by such instalments as they might order.

HILBERY and STABLE, JJ., agreed. Appeal allowed.

APPEARANCES: *Rodger Winn* (*Solicitor, Ministry of Pensions and National Insurance*); the defendant did not appear and was not represented.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 135

Court of Criminal Appeal

MURDER: APPLICATION OF "REASONABLE MAN" TEST

R. *v.* Ward

Lord Goddard, C.J., Stable and Ashworth, JJ.

11th January, 1956

Appeal against conviction.

A man of sub-normal intelligence was charged with the murder of an eighteen-months-old child. At his trial he said that the child was crying and would not be quiet and that he had lost his temper and that in his temper he had picked the child up and shaken her with his "full force"; he said that he had had no intention of killing the child or hurting her in any way and that there was no thought in his mind except to make her be quiet. On this part of the case the judge directed the jury: "If when he did the act which he did do, he must as a reasonable man have contemplated that death or grievous bodily harm was likely to result to the child as a result of what he did, then . . . he is guilty of murder. If, on the other hand he could not, as a reasonable man, have contemplated that death would result in consequence of what he did, then he is guilty of manslaughter." The jury returned a verdict of murder. On appeal, on the ground of misdirection, it was contended that the objective test of what a "reasonable" man would have thought or contemplated was inappropriate, except in cases where death occurred in the course of a felony or of resisting arrest, and that the proper test to apply was the subjective test of what did the particular man himself, with his particular peculiarities and mentality, think or contemplate.

LORD GODDARD, C.J., said that the direction given by the judge was unimpeachable and was one which had been given

to juries in scores of cases. The test must be applied to all alike and the only measure that could be brought to bear in these matters was what a reasonable man would or would not contemplate. If the act was one as to which the jury could find that a reasonable man would say: "It would never occur to me that death or grievous bodily harm would result," then they could find manslaughter; but if the jury came to the conclusion that any reasonable person, that was, a person who could not set up a plea of insanity, must have known that what he was doing would cause at least grievous bodily harm and the death was the result of that grievous bodily harm, then a verdict of murder was justified, and that amounted to murder in law. The judge had given the jury every opportunity of finding manslaughter if they thought fit, and the court could find no fault with the summing up. Appeal dismissed.

APPEARANCES: *Rudolph Lyons*, Q.C., and *E. Lyons* (*Hepworth and Chadwick*, Leeds); *G. Veale*, Q.C., and *J. R. Cumming-Bruce* (*Director of Public Prosecutions*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 423**

Courts Martial Appeal Court

PRACTICE NOTE

CRIMINAL LAW: PRACTICE: INDICTMENT: SIMPLE LARCENY: FORM OF COUNT

R. *v.* Bryant (No. 2)

Lord Goddard, C.J., Hilbery and Stable, JJ.

23rd January, 1956

In *R.* v. *Bryant* [1955] 1 W.L.R. 715; 99 SOL. J. 438, Sergeant Bryant, Royal Army Service Corps, appealed to the Courts Martial Appeal Court against his conviction by a court martial sitting in the Canal Zone, Egypt, of stealing two Egyptian pounds, the property of the President of the Regimental Institute of No. 1 Cold Storage Depot, Royal Army Service Corps. He had been charged under s. 41 of the Army Act of committing the civil offence of larceny "contrary to s. 2 of the Larceny Act, 1916," which prescribes a maximum sentence of five years' imprisonment. He appealed on the ground that the charge should have been laid under s. 18 of the Army Act, which deals specifically with the offence of stealing the property of a Service institution, and which limits the punishment upon conviction to two years' imprisonment "... or such less punishment as is in this Act mentioned." The court dismissed the appeal and made some comments upon the offence of simple larceny at common law and whether an indictment should make reference to s. 2 of the Larceny Act, 1916.

LORD GODDARD, C.J., said that he desired to refer briefly to *R.* v. *Bryant, supra*, heard before the Courts Martial Appeal Court on 9th May, 1955, when Hallett and Byrne, JJ., were sitting. It was understood that the decision had caused some difficulty to clerks to justices, and those who had to prepare charges and indictments, and the court desired to give a short explanation of the decision which should clear up any difficulty that might be felt. His lordship continued: "The argument for the appellant in that case was that, as s. 18 of the Army Act provided a special punishment for the stealing of military property, the accused could not be charged, as he was, with stealing contrary to s. 2 of the Larceny Act. We pointed out that s. 2 is concerned with punishment and does not create the offence of larceny which is and always has been a crime at common law, though the punishment has varied from time to time. The effect of the section is that for any larceny for which no special punishment is provided the maximum sentence is five years' imprisonment. If, then, a person is charged merely with larceny he cannot receive a heavier sentence, but if charged or indicted with larceny from the person or from a dwelling-house, to take two instances, he is liable to heavier punishment. We did not say, nor did we intend to say, that in civilian courts the addition of the words 'contrary to s. 2 of the Larceny Act' is improper, though if all that is intended is to charge a simple and not a compound or aggravated larceny these words are in truth surplusage. That this was the opinion of that great authority on the criminal law, Sir James Fitzjames Stephen, is clear from p. 47 of vol. III of his History of the Criminal Law, where he said that the expression 'simple larceny,' which first appeared in ss. 2 and 4 of the Larceny Act, 1861, obscured those provisions and had no definite meaning. At the same time it is unobjectionable, and indeed convenient, to refer to s. 2 where a simple charge of larceny is preferred, as it serves to direct the attention of the court to the fact that the charge is not one of compound or aggravated larceny, and to the punishment which the offence charged carries. The reference to the section does not make the indictment bad and equally, if the indictment charged larceny contrary to the common law, it would be good, but the sentence could not exceed five years even if the evidence disclosed a compound larceny. It is true that Sched. I to the Magistrates' Courts Act, which enumerates the indictable offences which can be tried summarily, refers among others to offences under s. 2, but that must be taken to mean that a larceny for which no special punishment is provided is one of the offences which can be dealt with summarily. If, then, for the words in the penultimate sentence of the report 'as it is proper to charge him in this country' are substituted 'as he might have been charged in this country,' we think that any difficulty or misunderstanding will be dispelled." His lordship added that the statement now made was concurred in by a number of judges.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 133**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Agricultural Research Bill [H.C.]	[31st January.
Dentists Bill [H.C.]	[31st January.

Read Second Time:—

Barnsley Corporation Bill [H.L.]	[31st January.
City of London (Various Powers) Bill [H.L.]	[1st February.
Elder Yard Chapel Chesterfield Bill [H.L.]	[1st February.
Heywood and Middleton Water Bill [H.L.]	[1st February.
Saint Stephen Walbrook (Saint Antholin's Churchyard) Bill [H.L.]	[31st January.
Sion College Bill [H.L.]	[1st February.
Solicitors (Amendment) Bill [H.L.]	[31st January.
Tees Conservancy Bill [H.L.]	[31st January.

B. QUESTIONS

THE LEGAL AID SCHEME

VISCOUNT ELIBANK asked whether the Government were aware of the following remarks by Roxburgh, J., in a judgment delivered on 13th January, 1956:—

(1) "In olden days, before the Legal Aid Scheme, if you suspected a man of stealing something, you had to prove it. You were not able to put him to the expense of proving that he did not steal it";

(2) "The plaintiff abandons his action so the position that results is that ... the defendants ... do not get the formal vindication from the judge which they may at least have hoped for seeing that their chances of recovering anything in this action from this plaintiff ... are nil";

(3) "The question of public interest is posed ...: is it right that the State should wholly maintain [a plaintiff] in making a charge which in substance is a charge of dishonesty against some people and then wait until they have vindicated their honour—not being proved to be guilty, but vindicated their honesty—and then, when at great expense they have vindicated their honesty, turn round and say: 'Well, true enough we maintained this action, paid the whole costs with no contribution at all upon the plaintiff, but so far as the defendants are concerned you can whistle for the costs in vindicating your honesty.' That is the question that I pose. It is not for me to answer it";

(4) "I think it was a most unreasonable action, indeed a shocking action";

and whether they would consider introducing into the administration of the Legal Aid Scheme changes to preclude cases of such a kind being brought before the courts.

The LORD CHANCELLOR said that the Scheme had resulted in a large number of men and women obtaining justice—but he was constantly on the look-out for ways of improving the Scheme. He had examined the case and was satisfied that the plaintiff genuinely believed in his case, that the legal aid committee had acted with the fullest sense of their responsibilities, and that leading counsel of great experience in this type of case had throughout acted in accord both with the letter and the spirit of the Scheme and with the high principles of his profession. In the result the plaintiff was proved to be quite mistaken, and as soon as that was apparent he had very properly abandoned his case.

It was impossible to guard against such occurrences. All lawyers had had experiences of the cast-iron case which failed and of the most unlikely case which succeeded. The Rushcliffe Committee had specifically recommended, and the Government and Parliament had accepted the principle, that an unsuccessful assisted person did not automatically have to pay the costs of the winner. No satisfactory alteration to this principle had as yet been put forward. He would consider the suggestion that in such cases the trial judge could direct that the State should pay the costs of the successful defendant.

Viscount Kilmuir also pointed out that the Government was pledged to introduce the Legal Advice Scheme during the present Parliament. [31st January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Pensions (Increase) Bill [H.C.] [3rd February.

To provide for increases in certain pensions; and to amend the Pensions (Increase) Acts, 1920 and 1924, the Pensions (Increase) Acts, 1944 and 1947, the Pensions (Increase) Act, 1952, and the Second Schedule to the Pensions (India, Pakistan and Burma) Act, 1955.

Read Second Time :—

Local Authorities (Expenses) Bill [H.C.] [3rd February.

Ministry of Housing and Local Government Provisional Order (Colne Valley Sewerage Board) (No. 2) Bill [H.C.] [3rd February.

National Insurance Bill [H.C.] [3rd February.

Read Third Time :—

Monmouthshire County Council Bill [H.L.] [31st January.

In Committee :—

Housing Subsidies Bill [H.C.] [2nd February.

B. QUESTIONS

UNITED STATES AND BRITISH CITIZENS (MAINTENANCE PAYMENTS)

LORD JOHN HOPE refused to approach the U.S. Government with a view to making reciprocal arrangements to facilitate legal action against U.S. citizens who had deserted their dependants in this country and British citizens who had similarly deserted their families in the United States. He would, however, look at any evidence of women with young children being deserted and left penniless with no practical enforceable legal remedy. [30th January.

DAMAGES FOR LOSS OF EARNINGS

The ATTORNEY-GENERAL declined a proposal by Sir FRANK MEDLICOTT, arising out of the recent decision of the House of Lords in *British Transport Commission* v. *Gourley* [1956] 2 W.L.R. 41; *ante*, p. 12, and the difficulties which would occur if in every case there had to be an elaborate assessment of tax liability, to introduce legislation providing that no regard to tax liability should be paid where the damages were less than £5,000 [cf. 99 SOL. J. 877]. It would be unfortunate if there had to be an elaborate assessment of tax liability in all such cases, but he thought they should see first the extent to which the decision applied to other cases in actual practice. The impact of the decision on the law relating to assessment of damages required to be carefully watched. [30th January.

POST-WAR CREDIT CERTIFICATES (REDUCTION OF FACE VALUE)

Mr. H. BROOKE said that post-war credit payable may be less than the face value of the certificate mainly because the full tax due for the relevant year was not actually paid. The amount shown on the certificates was based on the tax payable, but in some cases the actual tax paid might have been less. Attention was drawn to this by a note on the certificates.

Mr. PAGE said that there were cases where just the opposite happened, where more tax had been paid than was due, and where, after a war-time payment of tax, there was a reassessment at a lower figure, the post-war credit certificate was written down in the books of the Treasury and the taxpayer was refused a return of the overpayment of tax because more than six years had elapsed. Mr. J. T. PRICE pointed out that widows were in no position after fifteen or sixteen years to check the tax position of their late husbands because no documentary evidence was available to them except in the Treasury. Mr. BROOKE replied that if anyone thought he might be liable to that kind of occurrence he could send in the certificates at any time. [2nd February.

SELF-EMPLOYED PERSONS (SUPERANNUATION TAX RELIEF)

Mr. H. BROOKE said that it was not possible to say exactly what classes of the self-employed would be entitled to claim relief if the unanimous recommendation in the report of the Committee on the Taxation Treatment of Provisions for Retirement were implemented that superannuation tax relief should be extended to self-employed persons who derived their remuneration from a profession or vocation and were taxed under Case II of Sched. D. If all those who might be said to carry on a profession or vocation claimed the maximum relief the cost to the Exchequer at current rates of taxation might be of the order of £7 million. [2nd February.

INCOME TAX (FINES FOR PARKING OFFENCES)

Mr. H. BROOKE said that fines imposed for parking offences were not admissible as deductions in computing profits for tax purposes. [2nd February.

REMAND CENTRES

The HOME SECRETARY said that the need to restrict expenditure on Government building made it impossible to say when he would be able to provide remand centres for children and young persons up to the age of twenty-one years, as provided by s. 48 of the Criminal Justice Act, 1948. [2nd February.

CHILDREN AND YOUNG PERSONS ACT, 1933 (COMMITTEE)

Major LLOYD-GEORGE made the following statement :—

"My right hon. friends and I have considered with care and sympathy the proposals made by Mrs. Fisher's deputation in July last year, for a general inquiry into the social services concerned with the family, and by a deputation from the Magistrates' Association in November that the suggested inquiry should be coupled with a review of the working of the juvenile court system in England and Wales. Mrs. Fisher's deputation drew particular attention to the need for better co-ordination of the services in question. This matter has already received much attention in the departments concerned, and we propose to follow up, by means of departmental study and administrative action, the steps already taken to improve co-ordination of the local services at all levels and to secure a combined approach to a family's problems. As regards the proposals of the Magistrates' Association for a review of the work of the juvenile courts and the treatment of children coming before them, I have come to the conclusion that the time is ripe for a new study of this subject, and I propose to set up a Committee to consider and make recommendations regarding the working of the relevant provisions of the Children and Young Persons Act, 1933, as amended.

Both deputations also drew attention to the need to pay more attention to preventive work; and the Committee's terms of reference will include consideration of the powers and duties of local authorities under the Children Act for preventing the suffering of children neglected in their own homes. The membership and exact terms of reference of the Committee will be announced in due course. In order that interested organisations may have time to consider what evidence to submit to the Committee, I contemplate that it should not

start work before the autumn. We believe that the action which I have announced will meet the situation and will be of more practical value than a wide-ranging general inquiry at the present time." [2nd February.

STATUTORY INSTRUMENTS

Air Navigation (Amendment) Order, 1956. (S.I. 1956 No. 82.) 5d.
Beckenham (Repeal of Local Enactments) Order, 1955. (S.I. 1956 No. 104.)
Carriage by Air (Parties to Convention) (No. 6) Order, 1956. (S.I. 1956 No. 83.)
Diplomatic Immunities Restriction Order, 1956. (S.I. 1956 No. 84.)
Draft **Double Taxation Relief** (Taxes on Income) (Federation of Rhodesia and Nyasaland) Order, 1956. 8d.
East Lothian Water Board Water Order, 1956. (S.I. 1956 No. 65 (S. 2).) 11d.
Fire Services (Conditions of Service) Regulations, 1956. (S.I. 1956 No. 119.)
Foot-and-Mouth Disease (Infected and Controlled Areas Restrictions) (Amendment) Order, 1956. (S.I. 1956 No. 101.) 6d.
Foreign Service Fees (Amendment No. 2) Order, 1956. (S.I. 1956 No. 85.)
Goole (Water Charges) Order, 1956. (S.I. 1956 No. 105.)
Humber and Trent Rules (Revocation) Order, 1956. (S.I. 1956 No. 86.)
Draft **Kensington Gardens** Regulations, 1956. 5d.
National Insurance (New Zealand) Order, 1956. (S.I. 1956 No. 88.) 8d.
Prevention of Damage by Pests (Application to Shipping) (Amendment) Order, 1956. (S.I. 1956 No. 89.)
Stopping up of Highways (Liverpool) (No. 1) Order, 1956. (S.I. 1956 No. 68.)
Transfer of Functions (Agriculture) Order, 1956. (S.I. 1956 No. 87.)
Trucial States Order, 1956. (S.I. 1956 No. 90.) 1s. 2d.
West African Territories (Air Transport) (Amendment) Order in Council, 1956. (S.I. 1956 No. 91.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. WILLIAM TAYLOR has been appointed an Assistant Official Receiver for the Bankruptcy District of the County Courts of Ashton-under-Lyne and Stalybridge; Blackburn; Blackpool; Bolton; Burnley; Oldham; Preston; Rochdale and Stockport.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 27th January, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon GEORGE HENRY JUCKER, of No. 25 Egerton Gardens, London, S.W.3, and No. 5 Erlesdene, Green Walk, Bowdon, Cheshire, a penalty of £50 to be forfeit to Her Majesty, and further that he be suspended from practice as a solicitor from the 27th January, 1956, until the 15th November, 1956, provided that if he, before the said 15th November, shall have delivered to the Registrar of Solicitors an accountant's certificate complying with the provisions of s. 1 of the Solicitors Act, 1941, and covering the twelve months accounting period ended the 31st December, 1954, the said suspension from practice shall terminate on the date of such delivery as certified by the Secretary of The Law Society in accordance with the provisions of s. 1 of the Solicitors Act, 1941. The Committee further ordered that the said George Henry Jucker do pay to the applicant his costs of and incidental to the application and inquiry.

On the 27th January, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of FRANK HAVELOCK MAYWHORT, formerly of No. 1 Carmen Street, Ardwick, Manchester, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On the 27th January, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon ALFRED OGLE, of Town Hall Chambers, No. 26 West Street, Gateshead, and Cross Keys Buildings, Dunston-on-Tyne, a penalty of £50 (fifty pounds), to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 27th January, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of CONSTANCE LILIAN JANET WEBB, formerly of No. 6 Charterhouse Square, London, E.C.1, be struck off the Roll of Solicitors of the Supreme Court, and that she do pay to the applicant his costs of and incidental to the application and inquiry.

On the 27th January, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon WILLIAM RICHARD RENSHAW, of No. 39 Margaret Street, Cavendish Square, London, W.1, a penalty of £50 (fifty pounds), to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in vols. 97, 98 and 99:—

DRAFT MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Bristol City and County Council	City and County of Bristol: modifications to draft map and statement of 26th March, 1954	17th January, 1956	17th February, 1956
Cornwall County Council	Launceston, Liskeard Boroughs, St. Austell, Torpoint Urban Districts	23rd November, 1955	31st March, 1956
Devon County Council	Brixham, Buckfastleigh, Paignton Urban Districts	17th January, 1956	22nd May, 1956
	Totnes Borough; Totnes Rural District	17th January, 1956	22nd May, 1956
	Crediton Rural District: modifications to draft map and statement of 19th February, 1954	27th January, 1956	28th February, 1956
	Crediton Urban District: modifications to draft map and statement of 19th February, 1954	27th January, 1956	28th February, 1956
East Suffolk County Council	Eye Borough; Leiston, Felixstowe, Woodbridge Urban Districts; Blyth, Deben, Gipping, Hartismere Rural Districts: further modifications to draft maps and statements of 22nd April, 1953, and 26th January, 1954	30th December, 1955	28th February, 1956
Kent County Council	Administrative County of Kent, except Penge and Sheerness Urban Districts and developed parts of certain boroughs and other urban districts: further modifications to draft map and statement of 8th January, 1953	24th November, 1955 12th January, 1956	8th January, 1956 27th February, 1956

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Lincoln County Council, Parts of Lindsey	Welton Rural District: modifications to draft map and statement of 15th September, 1953	9th December, 1955	8th January, 1956
Northamptonshire County Council	Burton Latimer Urban District: modifications to draft map and statement of 29th July, 1953	11th January, 1956	17th February, 1956
	Corby Urban District: modifications to draft map and statement of 12th October, 1953	11th January, 1956	17th February, 1956
	Kettering Borough: modifications to draft map and statement of 12th October, 1953	11th January, 1956	17th February, 1956
	Kettering Rural District: modifications to draft map and statement of 12th October, 1953	11th January, 1956	17th February, 1956
	Oundle Urban District: modifications to draft map and statement of 9th December, 1953	11th January, 1956	17th February, 1956
	Oundle and Thrapston Rural District: modifications to draft map and statement of 9th December, 1953	11th January, 1956	17th February, 1956
	Raunds Urban District: modifications to draft map and statement of 9th December, 1953	11th January, 1956	17th February, 1956
Northumberland County Council	Berwick-upon-Tweed, Blyth, Morpeth, Wallsend Boroughs; Alnwick, Ashington, Bedlingtonshire, Hexham, Longbenton, Newbiggin-by-the-Sea, Prudhoe, Seaton Valley Urban Districts: modifications to draft maps and statements of 8th December, 1952, 17th February, 1953, 16th May, 1953, 15th August, 1953, and 5th March, 1954	14th December, 1955	17th January, 1956
Wiltshire County Council	Swindon Borough; Highworth Rural District: modifications to draft map and statement of 24th July, 1953	7th December, 1955	9th February, 1956
	Devizes Rural District: modification to draft map and statement of 12th December, 1952	23rd January, 1956	30th March, 1956

PROVISIONAL MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Worcestershire County Council	Kidderminster Rural District	9th December, 1955	6th January, 1956
	Tembury Rural District	20th January, 1956	17th February, 1956

In addition, East Sussex County Council announced in a notice dated 25th November, 1955, the preparation of definitive maps and statements for the boroughs of Bexhill and Rye, and the urban districts of Burgess Hill, Cuckfield and Portslade-by-Sea.

On 28th February, at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, at 5 p.m., a lecture will be given on "The Contribution of the Law Officers to International Law" by the Rt. Hon. Lord McNair, C.B.E., Q.C., LL.D., D.C.L., D.Litt., F.B.A. The chair will be taken by Sir Gerald Fitzmaurice, K.C.M.G., legal adviser to the Foreign Office. Admission will be free, without ticket.

OBITUARY

MR. A. C. AKEROYD

Mr. Arthur Charles Akeroyd, retired solicitor and deputy coroner of Halifax, has died, aged 72. He was president of Halifax Law Society in 1933–34 and was admitted in 1905.

MR. E. B. ALLARD

Mr. Elliot Barnard Allard, solicitor, of Whitstable, died on 4th February, aged 44. He was a former deputy coroner of East Kent and Canterbury and was admitted in 1933.

MR. C. F. BLOUNT

Mr. Cecil Francis Blount, solicitor, of Carlos Place, London, W.1, died on 6th February. He was admitted in 1914.

SOCIETIES

The next quarterly meeting of the LAWYERS CHRISTIAN FELLOWSHIP will be held at The Law Society's Hall, Bell Yard, W.C.2, on 14th February, 1956, at 6.15 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by three members of the fellowship on the subject of "The Law as a Christian Vocation."

CASES REPORTED IN VOL. 100

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